



Master Purchase and Subscription Agreement

This Master Purchase and Subscription Agreement (the "**Agreement**"), dated as of the Effective Date set forth below, is entered into by and between Advanced Public Safety, Inc., a Florida corporation, with its principal place of business at 400 Fairway Drive, Suite 101, Deerfield Beach, FL 33441, USA (hereinafter "**APS**"), and the corporation, government agency or other entity, as described below (hereinafter "**Customer**").

This Agreement is entered into with reference to the following information:

"Customer"	Customer Name:	City of Fairfield
	Customer Address:	1000 Webster Street, Fairfield, CA 94533
	Site Address: (if different than Customer Address):	
"Customer Contact"	Contact Name:	Lt. Rob Lenke
	Contact Title:	
	Contact Mailing Address: (if different than Customer Address):	
	Contact Telephone Number:	(707) 428-7606
	Contact Fax Number:	
	Contact Email:	RLenke@fairfield.ca.gov
"Effective Date":		

This Agreement consists of this Signature Page, the attached Agreement Terms and Conditions and any Exhibits attached hereto, and applies exclusively to the APS Products or Services identified in the Product Schedule and licensed or purchased by Customer. This Agreement becomes legally binding upon the signatures by authorized representatives of both parties below.

ADVANCED PUBLIC SAFETY, INC.

By: Carolyn M. Stelmat

Printed Name
and Title: Controller

Dated: 8/18/15

[CUSTOMER NAME]

By: [Signature]

Printed Name
and Title: STEVEN GARRISON CIO

Dated: 11/3/15

Advanced Public Safety, Inc.
Agreement Terms and Conditions

1. SCOPE OF AGREEMENT

Customer desires to purchase from APS and APS desires to sell to Customer the products and/or services listed on a Product Schedule on the terms and conditions contained herein. Such products and services may include products and services from one or more APS or Trimble entities, divisions or brands including without limitation Advanced Public Safety, Trimble Public Safety, Omega Group and/or Visual Statement.

2. DEFINITIONS

- 2.1 “Applications”** means the Licensed Software, SaaS, and Data Hosting Service and all Documentation to the foregoing.
- 2.2 “Customized Software”** means APS proprietary Licensed Software that is customized for Customer pursuant to a Product Schedule.
- 2.3 “Data Hosting Service”** means the APS proprietary data aggregation and hosting service provided by the APS ReportBeam hosting service to which APS may provide access to Customer under this Agreement and in which APS may host Customer’s applicable data on APS or third-party servers for remote access by Customer, together with any associated Documentation (in any medium).
- 2.4 “Documentation”** means the user’s guide, product manual and/or operating instructions (whether in printed or electronic format) supplied to the Customer by APS for aiding use of the Applications. Documentation is deemed to include any APS-provided revisions thereof.
- 2.5 “Equipment”** shall mean those items of hardware, equipment, or accessories specified on an applicable Product Schedule to be purchased by Customer and sold by APS.
- 2.6 “Licensed Software”** means the software modules and customization specified (but excluding Incidental Software) in the applicable Product Schedule to be installed on Customer’s computers, handheld devices and/or servers, together with any associated Documentation (in any medium), as well as Fixes, Minor Updates or Major Upgrades furnished to Customer pursuant to the terms of Exhibit 1 hereto. For the avoidance of doubt, the term “Licensed Software” includes “Customized Software”.
- 2.7 “Order”** means the document in hard copy or electronic form by which Customer orders APS products.
- 2.8 “Products”** means the Applications and Equipment.
- 2.9 “Product Schedule”** means the proposal, Order, Statement of Work, or other schedule identifying the APS Products or Services purchased and/or licensed under this Agreement.
- 2.10 “Services”** means Professional Services (as defined in Section 5), Maintenance Services (as defined in Section 3.13), technical support and any other services provided by APS to Customer, but does not include the SaaS and Data Hosting Service.
- 2.11 “Software as a Service” or “SaaS”** means the APS proprietary hosted software service or software as a service (SaaS) product(s) to which APS may provide access to Customer under this Agreement, together with any associated Documentation (in any medium). The SaaS is located on APS or third-party servers and is accessed remotely by Customer. The SaaS may also include some incidental client-side software modules (“**Incidental Software**”) that are installed on Customer’s computers and handheld devices as necessary to fully use and access the SaaS.
- 2.12 “Statement of Work”** means the Product Schedule (or portion thereof) describing professional services to be provided by APS for Customer and executed by the parties.

3. SOFTWARE AND APPLICATIONS LICENSE

The terms of this Section 3 shall apply to Customer’s license of Applications from APS pursuant to this Agreement. Software and Applications are licensed, not sold and any references herein to purchasing software or Applications shall mean licensing software or Applications.

- 3.1 License Grant – Licensed Software.** Subject to the terms and conditions of this Agreement and payment of the applicable license fees, APS grants Customer a non-exclusive, non-transferable, revocable license, without the right to sublicense, to use the number of copies of the Licensed Software listed in the applicable Product Schedule in machine-readable form on any computer hardware and operating system for which it was intended. Customer may authorize the personnel associated with its business to use the Licensed Software. Each seat license may only be used by one person at one time, on one computer at one time. Customer may also store or install a copy of the Licensed Software on a storage device, such as a network server, used only to install or run the Licensed Software on its other computers over an internal network, but in such case Customer must acquire and dedicate a seat license for each separate

computer on which the Licensed Software is installed or run from the storage device. A seat license for the Licensed Software may not be shared or used concurrently on different computers/devices. Customer's use of the Licensed Software is limited to the total number of installation copies and seat licenses purchased.

3.2 License Grant – SaaS. Subject to the terms and conditions of this Agreement and continuing payment of the Subscription Fees, APS grants Customer for the Term a non-exclusive, non-transferable, revocable license, without the right to sublicense, to access and use the SaaS listed in the applicable Product Schedule solely for Customer's internal business needs.

3.3 License Grant – ReportBeam Data Hosting Service. Subject to the terms and conditions of this Agreement and continuing payment of the Hosting Fees, APS grants Customer for the Term a non-exclusive, non-transferable, revocable license, without the right to sublicense, to access and use the Data Hosting Service listed in the applicable Product Schedule solely for Customer's internal business needs.

3.4 Additional License Grant Terms. Customer may authorize the personnel associated with its business to access and use the SaaS and/or Data Hosting Service for the number of users listed on the applicable Product Schedule. Customer shall not copy or reproduce the SaaS and/or Data Hosting Service in any manner, including onto its own computer, server or network systems, provided that Customer may install the Incidental Software on its own computers or handheld devices for its authorized users only. Access to and use of the SaaS and/or Data Hosting Service is restricted to Customer's authorized users only. Customer shall be responsible to ensure all Customer users maintain the security of any password, username, or other form of authentication involved in obtaining access to the SaaS and/or Data Hosting Service. Usernames and passwords must be uniquely assigned to a specific individual and may not be shared by multiple individuals at any one time or transferred.

3.5 Other Rights and Limitations.

3.5.1 Customer may not copy, modify, make derivative works of, rent, lease, sell, distribute or transfer the Applications, in whole or in part, except as otherwise expressly authorized under this Agreement. No service bureau work, multiple-user license or time-sharing arrangement is permitted. For purposes of this Agreement "service bureau work" shall be deemed to include, without limitation, use of the Applications to process or to generate output data for the benefit of or for purposes of rendering services to any third party over the Internet or other communications network. Customer agrees to use all commercially reasonable efforts to prevent its unauthorized use and disclosure.

3.5.2 The Applications contain valuable trade secrets proprietary to APS and its suppliers. To the extent permitted by relevant law, Customer shall not, nor allow any third party to copy, decompile, disassemble or otherwise reverse engineer the Applications, or attempt to do so, provided however, that to the extent any applicable mandatory laws give Customer the right to perform any of the aforementioned activities without APS' consent in order to gain certain information about the Licensed Software for purposes specified in the respective statutes (e.g., interoperability), Customer hereby agree that, before exercising any such rights, it shall first request such information from APS in writing detailing the purpose for which it needs the information. Only if and after APS, at its sole discretion, partly or completely denies the request, may Customer exercise such statutory rights.

3.5.3 Each Application is licensed as a single product. Customer may not separate its component parts for use on more than one computer except as specifically authorized in this Agreement.

3.5.4 Customer may not use the Applications for performance, benchmark or comparison testing or analysis, or disclose to any third party or release any results thereof (all of which information shall be considered APS Confidential Information) without APS' prior written consent.

3.5.5 Customer agrees to cooperate with APS to track the number of users, server computers, computers and other devices with access to the Applications at Customer's sites to ensure compliance with the license grant and installation restrictions in this Agreement. In the event the compliance check reveals that the number of installations or users at Customer's site exceeds the actual number of licenses purchased, Customer agrees to promptly reimburse APS the then current applicable list price for the extra licenses that are required to be compliant, but that were not obtained.

3.5.6 Each of Customer's computers or handheld devices on which Incidental Software is installed must be reconnected periodically to the Internet to communicate to the SaaS throughout the Term to enable the Incidental Software to continue to function properly. The required reconnection intervals are specified in the Documentation. Further, the Incidental Software will cease to function after the expiration or termination of the Term.

3.6 Customer Responsibilities.

3.6.1 Customer shall not: (i) send, store or run software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (ii) interfere with or disrupt the integrity of the Applications or the data contained therein; or (iii) upload,

post, reproduce or distribute any information, software or other material protected by copyright or any other intellectual property right (including the right of publicity and/or privacy) without first obtaining the permission of the owner of such rights.

3.6.2 Customer is solely responsible for: (i) monitoring and controlling the activity of each of its users; (ii) ensuring users' compliance with this Agreement; (iii) ensuring there is no unauthorized access to the Applications and notifying APS promptly of any such access of which Customer becomes aware; (iv) the reliability, accuracy, quality, integrity and legality of all Customer data and the means by which Customer acquires the Customer data; and (v) ensuring that its use of the Applications is in compliance with all applicable laws and regulations. Customer shall be solely responsible and liable for the acts and omissions of each of its users on the Applications.

- 3.7 Copyright.** All title and copyrights in and to the Applications (including but not limited to any images, photographs, animations, video, audio, music, and text incorporated into the Applications), the accompanying printed materials, and any copies of the Applications are owned by APS and its suppliers. Customer may, however, either: (a) make one (1) copy of the Licensed Software solely for backup or archival purposes; or (b) install the Licensed Software on a single computer provided it keeps the original solely for backup or archival purposes. Customer may not copy the accompanying printed materials without APS' consent or unless provided herein.
- 3.8 U.S. Government Restricted Rights.** The Applications are provided with "RESTRICTED RIGHTS." Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in this Agreement, and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (OCT 1988), FAR 12.212(a) (1995), FAR 52.227-19, or FAR 52.227-14(ALT III), as applicable.
- 3.9 Customization.** Customization or configuration of Applications performed by APS at Customer's request, if any, are Professional Services as provided in Section 5 and will be subject to additional charges, except as agreed to in writing by APS. APS will retain all intellectual property and other proprietary rights in and to the Applications and any additional customization or configuration, and shall have the right and authority to use, sell and distribute the Applications and utilize the results of the work for any other purpose, in APS' sole discretion, without requirement of notification or liability to Customer of any kind (including, without limitation, monetary remuneration).
- 3.10 Limited Software Warranty.** APS warrants that Customized Software will perform substantially in accordance with the Documentation for a period of one (1) year from the date of purchase. The above limited warranty does not apply to error corrections, updates or upgrades, if any, of the Customized Software after expiration of the limited warranty period, which are provided "AS IS" and without warranty unless otherwise specified in writing by APS. APS does not warrant that Applications will operate error free or uninterrupted, will meet Customer's needs or expectations, or that all nonconformities can or will be corrected.
- 3.11 Customer Remedies.** APS' and its suppliers' entire liability, and Customer's sole remedy, with respect to the Customized Software shall be either, at APS' option, (a) repair or replacement of the Customized Software, or (b) return of the applicable license fee paid for any Customized Software that does not meet APS' limited warranty. The foregoing limited warranty is void if failure of the Customized Software has resulted from: (i) accident, misuse, abuse, or misapplication; (ii) alteration or modification of the Customized Software without APS' authorization; (iii) interaction with software or hardware not supplied or supported by APS; (iv) improper, inadequate or unauthorized installation, maintenance or storage; or (v) if Customer violates the terms of this Agreement. Any replacement Customized Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.
- 3.12 Third Party Software Warranty.** APS will extend to Customer the manufacturer's warranty, if any, for third-party software delivered by APS to Customer under this Agreement. Customer acknowledges and agrees that APS shall not be responsible for separately warranting or supporting third-party software and that Customer must contract directly with the manufacturer of such third-party software for any support or maintenance.
- 3.13 Software Support and Maintenance; Service Level Agreement.** Subject to continuing payment of the applicable maintenance fees, Subscription Fees, and/or Hosting Fees, APS shall (i) provide support and maintenance services ("**Maintenance Services**") for the Licensed Software, but not including any third-party software, to Customer as described in Exhibit 1 hereto and (ii) provide the Service Level Agreement as described in Exhibit 2 for the SaaS and Data Hosting Service.

4. EQUIPMENT PURCHASES

The terms of this Section 4 shall apply to Customer's purchase of Equipment from APS pursuant to this Agreement.

- 4.1 Purchase Price.** The purchase price for the Equipment shall be as set forth on the applicable Product Schedule. Billing, payment and shipping terms shall be pursuant to Sections 7 and 8 of this Agreement.

- 4.2 Security Interest.** Until APS has received full payment of the purchase price for the Equipment, APS shall retain a purchase money security interest in the Equipment, unless prohibited by law. Customer agrees to execute any document to perfect such security interest as reasonably requested by APS.
- 4.3 Installation of Equipment.** Unless Customer has purchased installation services in the applicable Product Schedule, APS shall not be responsible for installing Equipment at Customer's location, which shall be Customer's sole responsibility.
- 4.4 Testing of Equipment.** Customer shall test all Equipment within ten (10) business days of receipt of such Equipment to ensure each unit is functioning properly. All packaging, user manuals, and accessories must be retained for at least thirty (30) days in their original condition should a warranty exchange, as provided below, be necessary.
- 4.5 Third Party Manufactured Equipment Warranty.**
- 4.5.1** If third party manufactured Equipment is incorrect, nonconforming, or damaged, Customer must notify APS in writing within ten (10) business days after Customer's receipt of such Equipment. APS will handle warranty returns pursuant to its RMA warranty return procedures then in effect for defects in such Equipment identified by Customer within thirty (30) days after Customer receives such Equipment. After such thirty (30) day period, Customer must refer all requests for warranty repairs or processing directly to the manufacturer.
- 4.5.2** APS will extend to Customer the manufacturer's warranty, if any, for all third-party manufactured Equipment delivered by APS to Customer under this Agreement. Customer acknowledges and agrees that APS shall not be responsible for separately warranting or supporting third-party manufactured Equipment other than as provided in Section 4.5.1.
- 4.5.3** THIS SECTION 4.5 STATES CUSTOMER'S SOLE REMEDY, AND THE SOLE LIABILITY OF APS, ARISING OUT OF ANY DEFECT IN THE EQUIPMENT SUPPLIED HEREUNDER.

5. PROFESSIONAL SERVICES

The terms of this Section 5 shall apply to APS' provision of professional services, including Deliverables, ("**Professional Services**") as described on an applicable Statement of Work (which is incorporated herein by reference). Professional Services may include, as examples and without limitation, configuration, training, software customization, software changes or Equipment installation.

- 5.1 Professional Services.** APS agrees to use diligent efforts to render the Professional Services described on the applicable Statement of Work by the delivery dates specified therein, if any. Any deliverables provided to Customer as part of the Professional Services shall be deemed "**Deliverables**". Customer acknowledges and agrees that APS requires Customer's diligent and timely cooperation, testing and feedback, including providing APS with reasonable access to Customer materials, resources, personnel, equipment or facilities to the extent such access is necessary for the performance of Professional Services. To the extent that Customer does not timely provide the foregoing cooperation, testing, feedback, and access required for APS to perform the Professional Services, APS shall be excused from performance until such items are provided. APS being excused from performance does not excuse Customer's continuing payment of Subscription Fees or Hosting Fees.
- 5.2 Changes to Scope of Professional Services.** If Customer desires to change a Statement of Work, Customer will submit a written request to APS detailing the proposed changes. If APS has the resources available to accommodate such changes, APS shall prepare an amendment to the Statement of Work or a change order (collectively "**Change Order**") detailing the changes, any fee adjustments required as a result of such changes, any adjustments to the delivery schedule required as a result of such changes, and any other necessary adjustments. If the Change Order is agreeable to Customer, both parties will execute the Change Order. If Customer and APS are not able to agree to changes to the Statement of Work, it will remain unchanged.
- 5.3 Training; User Acceptance Testing.** This Section 5.3 applies only to Deliverables for Customized Software.
- 5.3.1 Training Before User Acceptance Testing.** Customer must complete the remote, web-based training program provided by APS within fifteen (15) days after APS provides the initial software delivery to Customer as described in the Statement of Work ("**Initial Software Delivery**").
- 5.3.2 User Acceptance Testing ("UAT").** Customer must complete its UAT within thirty (30) days after completing the training referenced in Section 5.3.1.
- 5.3.3** Failure of Customer to schedule and attend the training programs or perform UAT within the time periods described in this Section 5.3 shall result in APS' automatic termination of Customer's Product Schedule pursuant to Section 9.2.2.
- 5.4 SmartExport Integration Services.** If Customer licenses the SmartExport product pursuant to Section 3 and the applicable Product Schedule, Customer must timely provide APS with the data and/or specifications APS requires to perform the configuration and

customization Professional Services for SmartExport for Customer. If Customer does not provide APS with such data or specifications by the agreed-upon deadline (but in no event more than 180 days after the Initial Software Delivery), then APS may provide and implement a Change Order to Customer by notice removing the SmartExport product from the applicable Product Schedule, which shall not reduce the License Fees or Subscription Fees, as the case may be.

- 5.5 Final Training Program.** If Customer purchases a final training program for Customized Software for Customer's end user employees, Customer shall cooperate with APS to schedule and attend such training program within thirty (30) days after APS provides the final Software Deliverable. If Customer fails to schedule and attend such training, APS may provide and implement a Change Order to Customer by notice removing the Final Training Program from the applicable Product Schedule, which shall not reduce any Fees due nor result in a refund to Customer.
- 5.6 Visual Statement (VS) Product Online Training.** If Customer purchases a VS product training seat for Customer's end user employees, Customer shall register and attend one of the regularly scheduled training courses within one hundred and eighty (180) days of purchase. If Customer fails to register for and attend such training within this time period, APS will consider its obligation for delivery of such training seat fulfilled and the training seat will no longer be valid and no refund will be given.
- 5.7 Visual Statement Onsite Training.** If Customer purchases a Closed VS Onsite Training for Customer's end user employees, Customer shall cooperate with APS to schedule and host such training program within one hundred and eighty (180) days of purchase. If Customer fails to schedule and attend such training within this time period, APS will consider its obligation for delivery of such training program fulfilled and the training course will no longer be valid and no refund will be given.

6. PRODUCT SCHEDULES

- 6.1 Submission of Product Schedule(s).** From time to time during the term of this Agreement, Customer may submit one or more Product Schedules, pursuant to which Customer shall purchase or license and APS shall deliver (upon acceptance thereof by APS, in accordance with Section 6.2) the Products and/or Services specified thereon. This Agreement shall apply to all Product Schedules submitted to and accepted by APS during the Term which Product Schedules are incorporated herein by reference. Unless otherwise specified therein, each Product Schedule shall be independent from, and have no impact on, any other Product Schedule(s). In the event any of the terms and conditions of a Product Schedule conflict with any term or condition hereof, the terms of this Agreement shall control and take precedence, unless the parties specifically agree otherwise in writing. Customer's submitting a Product Schedule to APS shall constitute Customer's binding and irrevocable offer to purchase the Products and/or Services specified thereon. Any additional or conflicting terms or conditions appearing on Orders or within Customer's terms and conditions of purchase or any other documentation shall be of no effect.
- 6.2 Acceptance of a Product Schedule; Statement of Work.** A Product Schedule shall not become effective unless or until it has been accepted by APS. A Product Schedule shall be deemed accepted by APS only upon the earlier of (a) the date APS ships any Product or makes available any Products or Services under such Product Schedule or (b) the date APS signs the applicable Product Schedule, thereby accepting in writing the terms thereof, provided however that a Statement of Work shall be deemed accepted by APS only upon the signature of both parties to the Statement of Work. The parties acknowledge that once APS accepts a Product Schedule, such Product Schedule shall represent a binding agreement whereby APS agrees to provide and Customer agrees to purchase the Products and/or Services ordered thereunder, pursuant to this Agreement.

7. DELIVERY; ACCEPTANCE

- 7.1 Delivery time.** Delivery times may be established by one of the following methods: (a) when Customer's Order is received and accepted in writing by APS; (b) after a Statement of Work is signed by Customer and APS, after which APS will produce the full business and functional requirements and specifications for the project and determine delivery dates; or (c) as otherwise provided in a Product Schedule. APS will use commercially reasonable efforts to meet the delivery dates agreed upon, unless Customer is in default under this Agreement or APS' performance is otherwise excused. APS shall not be liable for late or delayed shipment. Late or delayed shipment shall not be a basis for Customer's cancellation of any Order.
- 7.2 Delivery terms.** Delivery of the Equipment and Licensed Software (if not delivered electronically) will be made on an FCA (Incoterms 2010) APS' facility basis. Title and risk of loss or damage to the Equipment and, if applicable, the media containing Licensed Software (but not the Licensed Software) shall pass to Customer upon shipment. Unless otherwise agreed, APS will deliver the Products freight prepaid; provided that Customer will pay or reimburse APS for all costs of carriage, freight, insurance (if applicable), taxes, duty and other related shipping charges in connection with shipment hereunder. APS has the right to make partial deliveries.
- 7.3 Acceptance.** Equipment shall be deemed accepted after the ten (10) day testing period referenced in Section 4.4, unless Customer notifies APS in writing prior to the expiration of such testing period that such Equipment is not functioning properly. Applications and

Professional Services shall be deemed accepted ten (10) days after completed delivery of all Software Deliverables or Professional Services, as applicable, unless Customer notifies APS in writing of a material nonconformity in the Application.

7.4 Return of Products. There is no right of return of Products. If APS, in its discretion, permits the return of Equipment, such Equipment must be returned to APS (a) within thirty (30) days of Customer's receipt of the Equipment, (b) in new, unused condition with all original packaging, and (c) pursuant to instructions provided by APS. APS will charge a 10% restocking fee for permitted returns.

8 PRICING; PAYMENT TERMS

8.1 Pricing. Customer shall pay the charges and fees for the Products and Services as shown on the applicable Product Schedule. APS reserves the right to change the amount of the annual Subscription Fees, Hosting Fees and Maintenance Services Fee once per year at the date of renewal, subject to APS notifying Customer at least thirty (30) days in advance.

8.2 Payment Terms. Payment terms applicable to this Agreement shall be as follows:

8.2.1 Payment Terms. Unless agreed otherwise in a Product Schedule:

- (a) Except for the items described in Sections 8.2.1(b) – (e) below, payment terms shall be as follows: 50% of the total price and license fees for Products and Professional Services is due on receipt of Customer's Order or execution of the applicable Product Schedule; thereafter, 40% of the price is due on Initial Software Delivery (excluding SmartExport if applicable); and the remaining 10% is due fifteen (15) days following completed delivery of all Software Deliverables.
- (b) The renewal payments specified in the applicable Product Schedule and due for the SaaS ("**Subscription Fees**") and/or Data Hosting Services ("**Hosting Fees**") shall be invoiced and payable annually in advance on each anniversary of the date Customer is first provided access to the SaaS or Data Hosting Services, as the case may be.
- (c) Maintenance Services Fees specified in the applicable Product Schedule for Licensed Software shall be invoiced and payable annually in advance at the beginning of the Initial Maintenance Services Term and each Renewal Services Term (such Services Terms are defined in Exhibit 1). If Customer discontinues and then resumes purchase of Maintenance Services, then in addition to the Maintenance Services Fee for the upcoming year, Customer shall pay the then-current APS reinstatement fee for the applicable Maintenance Services.
- (d) APS shall invoice Customer for Equipment purchased upon shipment to Customer.
- (e) Customer agrees to reimburse APS for pre-approved travel, lodging and meal expenses incurred in the course of performing the Services at any location other than APS' site. APS will invoice Customer for expenses incurred and, at Customer's request and expense, APS will provide copies of receipts for which charges are incurred.

All payments due under this Agreement shall be made in U.S. Dollars net thirty (30) days from the date of APS' invoice unless otherwise required by law. APS shall have the continuing right to review Customer's credit and change Customer's payment terms and, without limiting the foregoing, may at any time demand advance payment, satisfactory security (such as, but not limited to, a confirmed, irrevocable letter of credit acceptable to APS), or a guarantee of prompt payment, prior to shipment, if APS deems such to be required in view of APS' assessment of Customer's credit worthiness. No discount will be granted for advance payment. All payments are nonrefundable, unless expressly provided herein. APS may in its sole discretion stop performing Services until any past-due amounts are paid in full. Maintenance Services will automatically renew after each Maintenance Services Term (as defined in Exhibit 1) unless cancelled by Customer with sixty (60) days written notice to APS prior to the expiration of the then-current Maintenance Services Term.

8.2.2 Late Payments. If any fees or expenses are not paid when due, APS may, at its option and without prejudice to any other rights or remedies it may have, charge interest at a rate of one percent (1%) per month or, if less, the highest rate allowed by applicable law from the date such fee or the charge first became due, unless otherwise required by law. Customer shall be liable for any costs incurred by APS in the collection of unpaid amounts. The date of the receipt of payment by APS shall be determinative. APS shall be entitled to offset payments against prior debt balances in Customer's account.

8.2.3 Taxes. Fees are stated exclusive of any income (except for taxes on APS' net income), consumption, VAT, property, export, excise, sales and use, or other taxes, custom duties, or similar charges, levies or assessments, or by any related withholding obligations or withholding taxes, all of which are the responsibility of and shall be paid solely by Customer, unless Customer provides an exemption certificate valid in the state to which the Products will be shipped or Services delivered.

9. TERM AND TERMINATION; SUSPENSION

9.1 Term. This Agreement shall commence upon the Effective Date and continue in effect for five (5) years thereafter unless otherwise required by law or terminated earlier pursuant to this Agreement (the "**Term**"). Thereafter this Agreement shall automatically renew for additional one (1) year periods, unless otherwise required by law or terminated earlier pursuant to this Agreement, and the Term shall be extended accordingly. Customer shall notify APS in writing in advance if applicable law requires a different fixed term or renewal process.

9.2 Termination.

9.2.1 For Convenience. Either party may terminate this Agreement and any Product Schedule for any reason or no reason by giving ninety (90) days' advance, written notice delivered in accordance with Section 16.10.

9.2.2 For Breach. Either party shall have the right to terminate this Agreement and any Product Schedule upon written notice in the event that the other party, or any of its officers, employees, contractors or agents breaches any provision of this Agreement, and such breach remains uncorrected for more than thirty (30) days after the non-breaching party gives the breaching party written notice of such breach. Customer and APS stipulate that Customer's failure to perform for purposes related to Section 9.2.4, below, does not qualify as a breach of this Agreement under this Section, 9.2.2.

9.2.3 For Bankruptcy, Insolvency. Either party may terminate this Agreement and any Product Schedule upon written notice in the event that the other party ceases business operations or enters into any bankruptcy, insolvency, receivership or like proceeding not dismissed within thirty (30) days, or assigns its assets for the benefit of creditors.

9.2.4 Availability of Funds. Customer warrants that it has funds available to pay all amounts due hereunder through the end of its current appropriation period and warrants further that it will request funds to make payments in each appropriation period from now until the end of the Agreement term. In the event that: (i) funds are not appropriated and are not otherwise available to Customer for any fiscal period following its current fiscal year ("subsequent fiscal period") for the acquisition of Services and functions which are the same as or similar to those for which the Products provided or installed under the Agreement was acquired, (ii) such non-appropriation has not resulted from Customer's act or failure to act, and (iii) Customer has exhausted all funds legally available for payment under the Agreement and no other legal procedure shall exist whereby payment thereunder can be made to APS, then Customer may terminate this Agreement to be effective as of the last day for which funds were appropriated or otherwise made available by giving APS sixty (60) days prior written notice of termination citing the unavailability of funds to continue. Notwithstanding the preceding paragraph, Customer shall remain responsible for payment to APS for all Services performed, as well as for all Products delivered and accepted.

9.2.5 For Customer's Unresponsiveness, Delays. In addition to APS' right to terminate this Agreement or the applicable Product Schedule pursuant to Sections 9.2.1 or 9.2.2, if Customer is unresponsive and does not timely provide or perform the feedback, testing, training or other communication required or anticipated by the applicable Product Schedule, APS' performance shall be excused and APS may put the applicable Product Schedule on hold and/or terminate this Agreement or Product Schedule as follows:

(a) If Customer is unresponsive for ninety (90) days from the date the last Deliverable was provided by APS to Customer, then APS may put the applicable Product Schedule on hold and suspend performance pending Customer's required response or action. APS may immediately invoice Customer for Products delivered and Professional Services rendered through the date of the hold at APS' then-current list price and time and materials rates, including any time and materials cost spent or incurred to set up the SaaS or Data Hosting Service for Customer.

(b) If a Product Schedule remains on hold for six (6) months or more, then APS may terminate, pursuant to Section 9.2.2, this Agreement and/or the applicable Product Schedule immediately upon written notice to Customer.

(c) If Customer is unresponsive for a period of one (1) year from the date the last Deliverable was provided by APS to Customer and APS has not previously terminated this Agreement and/or the applicable Product Schedule, this Agreement and the applicable Product Schedule shall automatically terminate and all fees listed in the applicable Product Schedule shall become due and payable (less amounts previously paid), provided that Customer shall not be required to pay for Equipment not shipped as of the date of termination.

(d) Customer acknowledges and agrees that placing a Product Schedule on hold and suspending performance shall affect the schedule for performance of Professional Services and delivery of Deliverables to Customer and APS may reassign its personnel in its sole discretion. If a Product Schedule is restarted with APS' consent, adjustments shall be made to the delivery schedule dependent upon the availability of APS personnel. If APS authorizes Customer to restart a Product Schedule terminated by APS pursuant to this Section 9.2.5, such re-engagement shall be at APS' then-current prices. The parties shall enter into a Change Order or new Product Schedule reflecting such new pricing and schedule for performance.

9.3 Effect of Termination. If this Agreement or a Product Schedule is terminated by Customer pursuant to Section 9.2.1, Customer shall pay APS (a) for Professional Services on a time and materials basis and Licensed Software at APS' then-current rates through the effective date of the termination, (b) Subscription Fees, Hosting Fees and Maintenance Services Fees for the then-current Term as if the Agreement had not been terminated early, (c) Equipment shipped, and (d) reimburseable expenses incurred, less amounts previously paid by Customer to APS under the applicable Product Schedule. If this Agreement or a Product Schedule is terminated by

APS pursuant to Sections 9.2.2 or 9.2.3, all fees listed in the applicable Product Schedule shall become immediately due and payable (less amounts previously paid), provided that Customer shall not be required to pay for Equipment not shipped as of the date of termination. The termination of this Agreement or any Product Schedule shall not relieve either party of any obligation previously accrued hereunder, nor is termination an exclusive remedy. Upon expiration or termination of this Agreement, Customer shall cease using the Applications, and return or permanently remove from all computers, servers and devices the Licensed Software, Documentation and other Confidential Information of APS and, upon APS' request, certify such removal in writing.

9.4 Suspension. In addition to APS' right to terminate this Agreement pursuant to Section 9.2.2, APS may suspend or restrict Customer's authorized users' access to the Applications, without liability, if: (i) Customer materially breaches (which shall include without limitation nonpayment of fees due) its obligations hereunder (provided, however, APS shall provide Customer with prior written notice of such suspension); (ii) APS determines in its sole discretion that the delivery of the SaaS, Data Hosting Service or Customer's use of the Applications is a threat to the normal operation of or otherwise compromises the APS network or any network used to provide the SaaS or Data Hosting Service; or (iii) APS has reason to believe that Customer, any of its agents or any third party is abusing one or more of the Applications or using it fraudulently or unlawfully.

9.5 Survival. The following sections, and any other sections that by their terms so provide, shall survive the expiration or termination of this Agreement: 2, 3.5 through 3.11, 8, 9.3, 9.5, 10, 11.2 through 11.4, and 14 through 16.

10. WARRANTY DISCLAIMER

10.1 Warranty Disclaimer. APS' REPRESENTATIONS AND LIMITED WARRANTIES HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES (WHICH ARE HEREBY DISCLAIMED), WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE INCLUDING (BUT NOT LIMITED TO) THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, NONINTERFERENCE AND NONINFRINGEMENT WITH REGARD TO THE PRODUCTS OR SERVICES PROVIDED BY APS, ITS LICENSORS, SUPPLIERS, REPRESENTATIVES OR SERVICE PROVIDERS.

10.2 APS DOES NOT WARRANT THAT THE SERVICES OR PRODUCTS PROVIDED HEREUNDER WILL SOLVE ANY GENERAL OR SPECIFIC PROBLEM OR MEET ANY GENERAL OR SPECIFIC CUSTOMER NEEDS.

10.3 Services Warranty. APS represents and warrants that Services will be performed in a professional, workmanlike manner by qualified professionals. APS MAKES NO OTHER WARRANTIES WHATSOEVER WITH RESPECT TO SAAS, DATA HOSTING SERVICE OR SERVICES WHICH IF PROVIDED HEREUNDER, ARE PROVIDED "AS-IS."

11. ACKNOWLEDGEMENTS; REPRESENTATIONS

11.1 Acknowledgements. APS and Customer acknowledge and agree:

- (a) APS is not responsible for the terms, conditions, obligations, or performance of or arising under agreements between Customer and any wireless or cellular network or airtime provider in connection with using the Products;
- (b) APS assumes no responsibility for improper storage of data or information or delivery of messages;
- (c) Customer assumes the entire risk in downloading or otherwise accessing any data, information, files or other materials obtained from the APS website, the SaaS, or the Data Hosting Service; and
- (d) Wireless networks and coverage, satellite coverage, and Internet access that are necessary for use and operation of the Products may be interrupted, terminated or restricted or the quality of the transmission may be diminished at any time. Actual coverage and operation of the Products may depend on system availability and capacity, system and equipment upgrades, repairs, maintenance, modifications and relocation, Customer's equipment, terrain, signal strength, structural conditions, weather and atmospheric conditions, governmental regulations, suspected fraudulent activities, acts of God and other conditions beyond APS' reasonable control.

11.2 Representations. Each party to this Agreement represents and warrants to the other party that: (a) such party has the full corporate right, power and authority to enter into this Agreement and each and every Product Schedule hereunder, and to perform the acts required of it hereunder; and (b) when executed and delivered by such party, subject to applicable law (if any), this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms. Customer shall not use the Products for any unlawful, abusive or fraudulent purpose, including without limitation, in any way that: (x) interferes with the ability of APS to provide products and services to Customer or other customers; or (y) avoids Customer's obligation to pay for the Products. Customer shall indemnify and hold harmless APS from any loss or damage to Customer or any third party resulting from Customer's misuse of Products.

11.3 Privacy. APS and Customer acknowledge that use of the Applications may have user privacy implications. Whether, and to what extent, a user's privacy rights are implicated may be affected by such things as: the use to which an Application is put; the information that is gathered by the Application; the dissemination of information that is gathered; the actions that are taken based upon the information gathered; the user's knowledge and/or consent to such monitoring; the policies and procedures that have been implemented and communicated by the administrator; and current federal and state laws, regulations and constitutional rights

applicable to the user. APS' use of Customer data arising from the Applications shall be governed by the Trimble Privacy Policy as may be modified from time to time, located at www.trimble.com/privacy.aspx and incorporated herein by this reference.

- 11.4 Customer's use of the Applications may create data that becomes the subject of litigation. If any aspect of the Applications becomes the subject of compulsory process for documents, testimony or other investigation in any proceeding in which Customer is a party and APS is not a party, Customer agrees to pay all fees incurred by APS in connection with reviewing, responding and complying with the process or other investigation to the extent such fees are not otherwise reimbursed by third parties. These fees include, without limitation, fees of APS or its outside counsel to object to or negotiate the terms of APS' compliance with the process and fees for time spent by APS' employees (at APS' then-current consulting rates) to respond to the process, together with all other reasonable out-of-pocket expenses incurred by APS, including but not limited to attorneys' fees and travel.

12. INDEMNIFICATION AND HOLD HARMLESS; LIMITATION OF LIABILITY

- 12.1 EXCEPT FOR DAMAGES FOR PHYSICAL HARM TO PERSONS, TANGIBLE PERSONAL PROPERTY OR REAL PROPERTY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF APS, APS SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY ANY OF THE PRODUCTS OR SERVICES PROVIDED HEREUNDER OR BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN, EVEN IF APS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

- 12.2 To the fullest extent allowed by law, APS shall indemnify, defend, and hold harmless the City, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or tangible damage to property arising from or connected with the willful misconduct or gross negligence of APS or any person directly or indirectly employed by or acting as agent for APS in the performance of this Agreement

It is understood that the duty of APS to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code, subject to the procedure described in Section 14.5. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve APS from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages. APS's responsibility for such defense and indemnity shall survive termination or completion of this agreement for the full period of time allowed by law.

- 12.3 EXCEPT FOR A BREACH OF SECTION 14, IN NO EVENT SHALL APS' TOTAL LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE PRODUCTS OR SERVICES FURNISHED, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED THE ACTUAL AMOUNT OF FEES PAID BY CUSTOMER TO APS UNDER THE APPLICABLE PRODUCT SCHEDULE.

- 12.4 THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

- 12.5 The parties agree that APS has set its fees and entered into this Agreement in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

13. INSURANCE REQUIREMENTS

- 13.1 WORKERS' COMPENSATION. During the term of this Agreement, APS shall fully comply with the terms of the law of California concerning workers' compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability APS may have for workers' compensation. Said policy shall also include employer's liability coverage of no less than \$1,000,000 per accident for bodily injury or disease.

- 13.2 GENERAL LIABILITY INSURANCE. APS shall obtain at its sole cost and keep in full force and effect during the term of this Agreement commercial general liability insurance in the amount of no less than \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage.

- 13.3 AUTOMOBILE LIABILITY INSURANCE. APS shall obtain at its sole cost and keep in full force and effect during the term of this Agreement automobile liability insurance in the amount of no less than \$1,000,000 per occurrence for bodily injury and property damage.

- 13.4 The general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

(a) The CITY, its officers, officials, employees, agents and volunteers shall be named as additional insureds under the policy.

(b) The CITY, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of

work or operations performed by or on behalf of APS; products and completed operations of APS; premises owned, occupied or used by APS; and automobiles owned, leased, hired or borrowed by APS. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, agents or volunteers.

(c) The policy shall operate as primary insurance, and no other insurance effected by the CITY or other named insureds will be called upon to cover a loss covered thereunder.

13.5 No cancellation, major change in coverage, expiration, or nonrenewal will be made during the term of this Agreement, without thirty (30) days written notice to the City of Fairfield prior to the effective date of such cancellation, or change in coverage.

13.6 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

13.7 The minimum limits stated above shall not serve to APS's policy limits of coverage. The requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

13.8 Concurrent with the execution of this Agreement, APS shall file with the City of Fairfield a standard endorsement form providing for each of the above requirements.

14. INTELLECTUAL PROPERTY

14.1 **Intellectual Property Ownership.** As between APS and Customer, Customer agrees that APS and its suppliers, as applicable, own all right, title and interest in and to all intellectual property and other proprietary rights in the technology, software, designs, engineering details, schematics and similar data relating to or incorporated in the Products and Services and any accompanying documentation or information derived from the foregoing. Customer is prohibited from, and shall prevent any third party from, removing, covering or altering any of APS' or its suppliers' patent, copyright or trademark notices placed upon, embedded in or displayed by the Products or their packaging and related materials. APS and its suppliers, as applicable, reserve all rights not specifically granted to Customer hereunder.

14.2 **Indemnification.** APS shall indemnify and hold Customer harmless from and against any finally adjudicated loss, damage, liability or expense on account of any claim(s), and shall defend any suit and dispose of any claim(s) or other proceedings, arising from an allegation that an Application (which shall not include third party software) infringes any United States patent, copyright, or other proprietary right. In the event that such Application is, or in APS' opinion is likely to be, enjoined due to the type of infringement described in this Section 14.2, APS, at its option and expense, may in its discretion: (a) procure for Customer the right under such patent or copyright to use the infringing Application; (b) modify the infringing Application so that it becomes non-infringing; (c) replace the infringing Application with functionally equivalent non-infringing products or services; or (d) if APS determines that the foregoing alternatives are not reasonably available, accept return (or certification of permanent removal) of the infringing Application or applicable part thereof, and refund the payments paid for such Application. APS shall not be liable for any costs or expenses incurred without its prior written authorization.

14.3 **Exceptions.** Notwithstanding the provisions of Section 14.2 above, APS shall have no liability to the extent that any claim or action would have been avoided but for: (a) the combination, operation or use of the Application with any other product(s) or service(s) not provided by APS; (b) modification of the Application after delivery by APS, unless such modification is performed by APS or a duly-authorized APS agent and authorized in advance in writing by APS; (c) Customer's use of a version of an Application which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Application; or (d) incorporation of the Application into any of Customer's own product(s) or service(s).

14.4 **Entire Liability.** THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF APS AND THE EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ANY ALLEGED INFRINGEMENT OF ANY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS BY THE APPLICATIONS OR ANY PART THEREOF.

14.5 **Procedure.** APS' indemnification obligations under this Section 14 shall be subject to and conditioned upon Customer: (a) giving APS sole control of any such claim, suit or proceeding or settlement negotiations (to the extent permitted by law); (b) notifying APS promptly in writing of such claim, suit or proceeding and giving APS authority to proceed as contemplated herein; (c) at APS' reasonable expense, giving proper and full information and assistance to settle and/or defend any such claim, suit or proceeding; and (d) agreeing not to enter into any settlement of such claim, suit or proceeding.

15. CONFIDENTIALITY

15.1 **Confidential Information.** "Confidential Information" of a party shall mean any information disclosed by that party to the other pursuant to this Agreement or pursuant to any Product Schedule hereunder which is in written, graphic, machine readable or other tangible form and is marked "Confidential," "Proprietary" or in some other manner to indicate its confidential nature. However, all

Customer data remains the property of the Customer and shall remain confidential regardless of whether pre-marked as confidential or in any other manner to indicate its confidential nature. Confidential Information may also include oral information disclosed by one party to the other pursuant to this Agreement or any Product Schedule hereunder, provided that such information is designated as confidential at the time of disclosure and is reduced to writing by the disclosing party within a reasonable time (not to exceed thirty (30) days) after its oral disclosure, and such writing is marked in a manner to indicate its confidential nature and delivered to the receiving party. The terms and conditions of this Agreement and of each applicable Product Schedule shall be considered Confidential Information of APS.

15.2 Nondisclosure. Each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except as set forth herein, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each of the parties shall use at least the same degree of care that it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other party under this Agreement, which shall in no event be less than reasonable care. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information.

15.3 Exceptions. Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information of the other which: (a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving party; (b) was known to the receiving party, without restriction, at the time of disclosure; (c) is disclosed with the prior written approval of the disclosing party; or (d) is disclosed pursuant to the order or requirement of a court, administrative agency, federal law, foreign state law, California state law (including, but not limited to, a public records request pursuant to California Government Code Section 6253 solely to the extent confidential treatment is not permitted by law), applicable regulatory authorities, or other governmental body; provided, however, that the receiving party shall provide prompt notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Notwithstanding anything in this Agreement or any applicable Product Schedule to the contrary, each party may disclose Confidential Information to its affiliates, employees, consultants, agents, attorneys and advisors ("**Representatives**") who need to know the Confidential Information, provided that each such Representative is bound by a confidentiality obligation at least as restrictive as that in this Agreement.

15.4 Remedies. Any breach of the restrictions contained in this Section 15 is a breach of this Agreement which may cause irreparable harm to the non-breaching party. Any such breach shall entitle the non-breaching party to seek injunctive relief in addition to all legal remedies.

16. MISCELLANEOUS

16.1 Assignment. Customer shall not assign or transfer its rights or obligations under this Agreement, in whole or in part, without the prior written consent of APS, which consent shall not be unreasonably withheld. This Agreement shall be binding on and inure to the benefit of the parties respective successors and permitted assigns.

16.2 Governing Law; Jurisdiction. Unless otherwise required by applicable law, this Agreement shall be governed by the laws of the State of California and applicable United States Federal law without reference to "conflict of laws" principles or provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Unless otherwise required by applicable law, the parties consent to the jurisdiction of the state and federal courts located in Santa Clara County, California, for any and all issues arising out of the obligations contained herein.

16.3 Compliance with Law; Export Compliance. Each party shall perform its obligations and exercise its rights under this Agreement in compliance with all applicable laws, rules, regulations and legal orders, including but not limited to the United States Foreign Corrupt Practices Act of 1977 as amended, the International Anti-Bribery and Fair Competition Act of 1998, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Customer may not directly or indirectly export or re-export, or knowingly permit the export or re-export of the Products or Services (or portions thereof) to any country, or to any person or entity subject to United States or foreign export restrictions in contravention of such laws and without first obtaining the appropriate license(s).

16.4 Force Majeure. Except for the payment of fees by the Customer, if the performance of any part of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the reasonable control of either party, that party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.

16.5 Severability. If any provision of this Agreement is held to be invalid or unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

16.6 Waiver. No waiver of any provision of this Agreement shall be effective unless signed by both parties. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

16.7 Headings. The section headings used herein are for reference and convenience only and shall not enter into the interpretation of this Agreement.

16.8 Relationship of the Parties. The relationship of the parties shall be only that of independent contractors. Nothing in this Agreement shall be construed so as to deem a party, or any of its employees, agents, successors or assignees thereof, as an employee, partner, joint venturer or agent of the other party, and neither party shall hold itself or the other party out as such.

16.9 Entire Agreement. This Agreement (including all Exhibits and Product Schedules attached hereto or incorporated herein by reference) constitutes the entire agreement between the parties with respect to its subject matter and supersedes all oral and written negotiations, representations, commitments, proposals, offers, writings and other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing signed by each of the parties. It is expressly agreed that the terms of this Agreement shall supersede the terms in any Customer Order or other purchasing or sales document.

16.10 Notices. All notices and requests in connection with this Agreement are deemed given as of the day they are received either by messenger, overnight delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested. Any such notices to Customer should be sent to the address set forth in the Table on page 1, and sent to the attention of the Customer Contact named in such Table. Any such notices to APS should be addressed as follows (or to such other address as APS may designate in writing to Customer pursuant to this notice provision):

Address:	Copy to:
Advanced Public Safety, Inc. Attention: General Manager 400 Fairway Drive, Suite 101 Deerfield Beach, FL 33441 USA	Trimble Navigation Limited Attention: General Counsel – Legal Notice 935 Stewart Drive Sunnyvale, CA 94085 USA

If Customer elects to change the Customer Contact set forth in the Table on page 1 during the Term, Customer must notify APS of the new Customer contact in writing pursuant to this notice provision.

16.11 Limitations on Actions. No dispute or legal action arising under this Agreement, may be brought by either party more than one (1) year after such cause of action accrued, except that an action for nonpayment may be brought within two (2) years of the date of the last payment.

16.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which will be considered an original and all of which when taken together will constitute a single fully-signed original. Facsimile and other electronic means of signatures on this Agreement shall be binding.

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Exhibit 1 Support and Maintenance Services

This Exhibit 1, Support and Maintenance Services, describes the technical support and maintenance services to be provided by APS for the Licensed Software during the Term, subject to the payment of applicable Maintenance Service Fees.

1. ADDITIONAL DEFINITIONS

- 1.1 **"Fix(es)"** means an error correction or other update created to fix a previous Licensed Software version that does not substantially conform to its performance specifications in the Documentation.
- 1.2 **"Maintenance Services"** means the technical support and maintenance services described in Section 2 of this Exhibit 1.
- 1.3 **"Maintenance Services Term"** means each twelve (12)-month period during which APS will furnish the maintenance services to Customer as described in this Exhibit 1. The Initial Maintenance Services Term commences on the date of completed delivery to Customer of all Software Deliverables. A **"Renewal Services Term"** is deemed to commence automatically at expiration of the previous Services Term (subject to Customer's payment of the applicable fee), or, in the event of a period of discontinuance, the date on which Customer's Order for a resumption of Maintenance Services is accepted in writing by APS.
- 1.4 **"Minor Update(s)"** occur(s) when enhancements are made to current features in the Licensed Software, including for example without limitation, updates resulting from changes in state specifications, laws or regulations.
- 1.5 **"Major Upgrade(s)"** occur(s) when significant new features are added to Licensed Software, or when a new product containing new features replaces the further development of a current product line.

2. MAINTENANCE SERVICES

During the Maintenance Services Term, APS will provide Customer with the following described Maintenance Services to correct errors in the Licensed Software and enable the Licensed Software to perform substantially in accordance with its Documentation:

- 2.1 **Standard Support.** APS will provide telephonic and email support and, subject to Section 2.2 below, will use commercially reasonable efforts to correct or recommend a workaround solution for errors in the Licensed Software in accordance with the priority levels, times of service and escalation procedures set forth in Schedule A attached hereto. Such support is provided for the current release of the Licensed Software and any other release of the Licensed Software for up to one (1) year following APS' announcement of discontinuance of such release.
- 2.2 **Corrective Maintenance.** APS will use commercially reasonable efforts to provide Fixes and/or workarounds to correct errors in the Licensed Software discovered by the Customer conditioned on the following:
 - (a) The error is promptly reported and sufficiently described in writing by the Customer in order for APS to reproduce it;
 - (b) The error did not result from a modification of the Licensed Software done by someone other than APS (or without APS' approval);
 - (c) The error is not due to a failure of equipment, hardware, material or software (drivers, operating systems, etc.) not supplied or supported by APS, and the error occurs through no fault of the Customer;
 - (d) The Licensed Software is used in the form in which it was supplied and/or updated and/or upgraded by APS; and
 - (e) The Licensed Software is and has been at all times installed and used in a proper manner and in accordance with the instructions and Documentation supplied by APS.
- 2.3 **Fixes, Updates and Upgrades.** APS may from time to time develop Fixes, Minor Updates and Major Upgrades for release to its customers generally. During the Maintenance Services Term, Customer will be entitled to receive Fixes and Minor Updates at no additional charge, subject to APS' established procedures for delivery to its customers. Major Upgrades will be made available to Customer for an additional fee. APS will provide reasonable assistance to help Customer install and operate such enhancements, provided that if APS agrees, in its sole discretion, to provide such assistance at Customer's facility, such assistance shall be subject to supplemental charges as described in Section 2.5 below. APS reserves the right to determine, in its sole discretion, what constitutes a Fix, Minor Update or Major Upgrade.
- 2.4 **Excluded Services.** The Maintenance Services provided by APS exclude training, customized software programming services, hardware or related supplies, upgrades or changes to third party software, or upgrades or changes to Licensed Software due to changes or upgrades in Customer or third party software that interfaces with Licensed Software.

2.5 On-site Technical Support. On-site technical support is excluded from the Maintenance Services provided by APS. APS may, however, in its sole discretion, make on-site technical support available to Customer at APS' then current rates for such on-site technical support, plus travel and other reasonable expenses. On-site technical support will be furnished at mutually agreed times.

3. CUSTOMER OBLIGATIONS

3.1 Customer Contact. Customer shall designate and notify APS of Customer's principal contact and one alternate back-up contact who are tasked with operation and maintenance of the Licensed Software for Customer ("**Customer Contact(s).**") To the maximum extent practicable, Customer's communications with APS will be through such designated Customer Contacts, and APS will have no obligation to provide its Maintenance Services to any other persons.

3.2 Customer Cooperation. During the Maintenance Services Term Customer agrees to:

- (a) promptly make available to APS without charge complete and accurate data, assistance and cooperation from Customer's personnel as well as access to Customer's facilities systems and equipment (including but not limited to server and mobile devices) as reasonable and necessary to enable APS to carry out its maintenance service obligations;
- (b) notify APS in writing immediately on becoming aware of a fault in the Licensed Software which might materially affect the operation of the Licensed Software;
- (c) use the Licensed Software in accordance with the Documentation and terms of the Agreement;
- (d) keep full security copies of all data processed by the Licensed Software in accordance with best computing practice;
- (e) ensure that all employees, consultants and contractors of Customer who use the Licensed Software or the Maintenance Services are properly trained in respect of such use;
- (f) ensure that a suitable modem link (e.g., a VPN) as specified by APS is installed and operated by the Customer on the equipment on which the Licensed Software is to be located at its own expense, for the purpose of providing APS with remote access to assist performance of the Maintenance Services; and
- (g) use only the current release version of the Licensed Software as may be provided by APS from time-to-time.

Customer acknowledges and agrees that APS shall not be liable for any deficiency in performing the Maintenance Services if the deficiency results from Customer's failure to provide the foregoing cooperation; and in such case, Customer shall not become entitled to a refund of all or any portion of the applicable Maintenance Services Fees.

3.3 Installation of Fixes, Updates and Upgrades. Customer agrees to install all Fixes, Minor Updates and Major Upgrades in accordance with the instructions and in order of receipt from APS.

3.4 No Modification of Licensed Software. Customer agrees not to modify, enhance or otherwise alter the Licensed Software unless and only to the extent specifically authorized in the Documentation or to the extent that the prior written consent of APS is obtained.

Schedule A
Error Priority Levels, Support Times, Escalation

1. TELEPHONE AND ELECTRONIC MAIL SUPPORT

APS will provide telephone or electronic mail assistance to Customer upon Customer's purchase of Maintenance Services. Support hours and contact information are established by product line as listed in the table below:

Products	Support Hours (Monday – Friday, excluding APS holidays)	Telephone Support Number	Email Support Address
Citation and Forms - APS branded products	8:30 a.m. to 7:00 p.m. Eastern Time (ET)	1-954-354-3000, option 3	support@aps.us
Citation and Forms - Visual Statement branded products	7:00 a.m. to 5:00 p.m. Pacific Time (PT)	1-888-828-0383 x. 503	support@visualstatement.com
Geographic Information Systems (GIS) (generally Omega Group branded products)	7:30 a.m. to 5:30 p.m. Pacific Time (PT)	1-800-228-1059 x. 117	support@theomegagroup.com

APS holidays are as follows:

• New Year's Day	• Thanksgiving Day
• President's Day	• Day after Thanksgiving
• Memorial Day	• Christmas Eve
• Independence Day	• Christmas Day
• Labor Day	• New Year's Eve

2. PRIORITY LEVELS OF ERRORS

In the performance of Maintenance Services, APS applies priority ratings to problems reported by Customer in the following manner:

a. Priority I Errors

- Description: Program errors that prevent some function or process from substantially meeting the functional specifications described in the Documentation, which materially affect the overall performance of the Licensed Software function or process, and for which no work-around solution is known.
- APS Response: APS will initiate the following procedures: (1) assign APS staff to correct the error; (2) provide Customer with periodic reports on the status of corrections; (3) commence work to provide Customer with a work-around, if a work-around can be determined, until final solution is available; and (4) provide a final solution to Customer as soon as it is available.

b. Priority II Errors

- Description: Program errors that prevent some function or process from substantially meeting the functional specifications described in the Documentation, but which has a reasonable work-around solution.
- APS Response: APS will provide a work-around solution to the Customer as soon as possible and shall exercise commercially reasonable efforts to include the Fix for the error in the next maintenance release for the Licensed Software.

c. Priority III Errors

- Description: Program errors that prevent some portion of a function from substantially meeting its functional specification described in the Documentation, but that do not materially affect the overall performance of the Licensed Software function.
- APS Response: APS may include the fix for the error in the next major release of the Licensed Software.

Exhibit 2 Service Level Agreement

This Exhibit 2, Service Level Agreement, describes the service level to be provided by APS for the SaaS and Data Hosting Service for the Term.

1. **Maintenance of Infrastructure.** APS shall be responsible for maintaining all hardware and infrastructure necessary to host the SaaS and Data Hosting Service if housed in data centers under APS' control but not if housed in third party data centers ("**Hosting Facility**"). If housed in a Hosting Facility, the terms of use between APS and the Hosting Facility shall apply.
2. **Customer Data; Backup.** Upon termination or expiration of the Agreement or Product Schedule for the SaaS or Data Hosting Service Customer shall have sixty (60) days to request a copy of the Customer data in a mutually agreeable, commercially standard form. Customer shall pay APS for providing such Customer data on a time and materials basis at APS' then-current rates. APS' Hosting Facility backs up all Customer data using a geo-redundant replication process; provided that APS may change its backup and retention schedule from time-to-time in its sole discretion.
3. **Technical Support.**
 - 3.1 **Support.** APS shall provide its standard technical support for the SaaS and Data Hosting Service during the Term, contingent upon continuing payment of Subscription Fees. APS reserves the right to modify the standard technical support services at any time without notice and in its sole discretion; provided, however, APS shall use commercially reasonable efforts not to modify such technical support in such a manner as to have a material adverse impact on Customer's access to and use of the SaaS and Data Hosting Service. Technical support for the SaaS and Data Hosting Service does not include the following or related services: implementation services, configuration services, integration services, custom software development, modifications to the Applications, training, or assistance with administrative functions. APS support contact information for the SaaS and Data Hosting Service is as listed in Schedule A to Exhibit 1.

3.2 System Performance Guidelines

3.2.1 System Performance. The SaaS and Data Hosting Service shall be available (as defined below) 99.9% of the month, 24 hours a day, 7 days a week, provided however, that APS may schedule periodic maintenance of the system ("**Service Availability Commitment**"). For purposes of this Service Availability Commitment, the SaaS and Data Hosting Service shall be deemed available during periods of "**Service Availability**", which shall be deemed to exist when the SaaS and Data Hosting Service (as applicable) can be accessed by authorized users via the Internet or other applicable wireless technologies and APS is able to receive, store and transmit data to and from the SaaS and Data Hosting Service (as applicable). The Service Availability Commitment and Service Availability do not include periods in which APS is performing periodic maintenance of the service pursuant to Section 3.2.3.

3.2.2 Service Availability Performance. If, in any given calendar month, Service Availability is less than the Service Availability Commitment, Customer may provide APS written notice of such Service Availability failure. APS and Customer shall cooperate (at no cost to Customer) to cure the Service Availability failure as quickly as possible from Customer's delivery of such written notice. Notwithstanding anything herein to the contrary, a Service Availability failure shall not occur and the SaaS and Data Hosting Service shall not be considered "unavailable" if a lack of Service Availability is due to the following: (a) failure of utilities, services, equipment or systems not within APS' reasonable control, including the Hosting Facility; (b) scheduled downtime or planned maintenance with advance written notice to Customer; (c) any act or omission of Customer; (d) Customer's applications, facilities, or equipment; or (e) other causes beyond the reasonable control of APS, including without limitation, failure of a wireless network or the Internet, default of a common carrier, or other *force majeure* event.

3.2.3 Scheduled Downtime. From time to time, APS may schedule downtime periods in which maintenance to the SaaS and/or Data Hosting Service is performed ("**Scheduled Downtime**"), thereby working to ensure further reliability and quality of the SaaS and Data Hosting Service. In the event of planned upgrades and maintenance, APS will provide Customer with at least five (5) days prior written notice of any such planned outage. APS will provide notifications on the client login web page. Such notice shall set forth the planned completion time for the maintenance performed during the Scheduled Downtime. APS shall use its good faith efforts to schedule and perform Scheduled Downtime on off-peak usage days and times appropriate for the region being served. Any Scheduled Downtime will be excluded from the Service Availability calculations.



Master Purchase and Subscription Agreement

This Master Purchase and Subscription Agreement (the "**Agreement**"), dated as of the Effective Date set forth below, is entered into by and between Advanced Public Safety, Inc., a Florida corporation, with its principal place of business at 400 Fairway Drive, Suite 101, Deerfield Beach, FL 33441, USA (hereinafter "**APS**"), and the corporation, government agency or other entity, as described below (hereinafter "**Customer**").

This Agreement is entered into with reference to the following information:

"Customer"	Customer Name:	City of Fairfield
	Customer Address:	1000 Webster Street, Fairfield, CA 94533
	Site Address: (if different than Customer Address):	
"Customer Contact"	Contact Name:	Lt. Rob Lenke
	Contact Title:	
	Contact Mailing Address: (if different than Customer Address):	
	Contact Telephone Number:	(707) 428-7606
	Contact Fax Number:	
	Contact Email:	RLenke@fairfield.ca.gov
"Effective Date":		

This Agreement consists of this Signature Page, the attached Agreement Terms and Conditions and any Exhibits attached hereto, and applies exclusively to the APS Products or Services identified in the Product Schedule and licensed or purchased by Customer. This Agreement becomes legally binding upon the signatures by authorized representatives of both parties below.

ADVANCED PUBLIC SAFETY, INC.

By: Carolyn W. Stelmat

Printed Name and Title: Controller

Dated: 8/18/15

[CUSTOMER NAME]

By: [Signature]

Printed Name and Title: STEVEN GARRISON CIO

Dated: 11/13/15

Advanced Public Safety, Inc.
Agreement Terms and Conditions

1. SCOPE OF AGREEMENT

Customer desires to purchase from APS and APS desires to sell to Customer the products and/or services listed on a Product Schedule on the terms and conditions contained herein. Such products and services may include products and services from one or more APS or Trimble entities, divisions or brands including without limitation Advanced Public Safety, Trimble Public Safety, Omega Group and/or Visual Statement.

2. DEFINITIONS

- 2.1 **"Applications"** means the Licensed Software, SaaS, and Data Hosting Service and all Documentation to the foregoing.
- 2.2 **"Customized Software"** means APS proprietary Licensed Software that is customized for Customer pursuant to a Product Schedule.
- 2.3 **"Data Hosting Service"** means the APS proprietary data aggregation and hosting service provided by the APS ReportBeam hosting service to which APS may provide access to Customer under this Agreement and in which APS may host Customer's applicable data on APS or third-party servers for remote access by Customer, together with any associated Documentation (in any medium).
- 2.4 **"Documentation"** means the user's guide, product manual and/or operating instructions (whether in printed or electronic format) supplied to the Customer by APS for aiding use of the Applications. Documentation is deemed to include any APS-provided revisions thereof.
- 2.5 **"Equipment"** shall mean those items of hardware, equipment, or accessories specified on an applicable Product Schedule to be purchased by Customer and sold by APS.
- 2.6 **"Licensed Software"** means the software modules and customization specified (but excluding Incidental Software) in the applicable Product Schedule to be installed on Customer's computers, handheld devices and/or servers, together with any associated Documentation (in any medium), as well as Fixes, Minor Updates or Major Upgrades furnished to Customer pursuant to the terms of Exhibit 1 hereto. For the avoidance of doubt, the term "Licensed Software" includes "Customized Software".
- 2.7 **"Order"** means the document in hard copy or electronic form by which Customer orders APS products.
- 2.8 **"Products"** means the Applications and Equipment.
- 2.9 **"Product Schedule"** means the proposal, Order, Statement of Work, or other schedule identifying the APS Products or Services purchased and/or licensed under this Agreement.
- 2.10 **"Services"** means Professional Services (as defined in Section 5), Maintenance Services (as defined in Section 3.13), technical support and any other services provided by APS to Customer, but does not include the SaaS and Data Hosting Service.
- 2.11 **"Software as a Service" or "SaaS"** means the APS proprietary hosted software service or software as a service (SaaS) product(s) to which APS may provide access to Customer under this Agreement, together with any associated Documentation (in any medium). The SaaS is located on APS or third-party servers and is accessed remotely by Customer. The SaaS may also include some incidental client-side software modules ("**Incidental Software**") that are installed on Customer's computers and handheld devices as necessary to fully use and access the SaaS.
- 2.12 **"Statement of Work"** means the Product Schedule (or portion thereof) describing professional services to be provided by APS for Customer and executed by the parties.

3. SOFTWARE AND APPLICATIONS LICENSE

The terms of this Section 3 shall apply to Customer's license of Applications from APS pursuant to this Agreement. Software and Applications are licensed, not sold and any references herein to purchasing software or Applications shall mean licensing software or Applications.

- 3.1 **License Grant – Licensed Software.** Subject to the terms and conditions of this Agreement and payment of the applicable license fees, APS grants Customer a non-exclusive, non-transferable, revocable license, without the right to sublicense, to use the number of copies of the Licensed Software listed in the applicable Product Schedule in machine-readable form on any computer hardware and operating system for which it was intended. Customer may authorize the personnel associated with its business to use the Licensed Software. Each seat license may only be used by one person at one time, on one computer at one time. Customer may also store or install a copy of the Licensed Software on a storage device, such as a network server, used only to install or run the Licensed Software on its other computers over an internal network, but in such case Customer must acquire and dedicate a seat license for each separate

computer on which the Licensed Software is installed or run from the storage device. A seat license for the Licensed Software may not be shared or used concurrently on different computers/devices. Customer's use of the Licensed Software is limited to the total number of installation copies and seat licenses purchased.

3.2 License Grant – SaaS. Subject to the terms and conditions of this Agreement and continuing payment of the Subscription Fees, APS grants Customer for the Term a non-exclusive, non-transferable, revocable license, without the right to sublicense, to access and use the SaaS listed in the applicable Product Schedule solely for Customer's internal business needs.

3.3 License Grant – ReportBeam Data Hosting Service. Subject to the terms and conditions of this Agreement and continuing payment of the Hosting Fees, APS grants Customer for the Term a non-exclusive, non-transferable, revocable license, without the right to sublicense, to access and use the Data Hosting Service listed in the applicable Product Schedule solely for Customer's internal business needs.

3.4 Additional License Grant Terms. Customer may authorize the personnel associated with its business to access and use the SaaS and/or Data Hosting Service for the number of users listed on the applicable Product Schedule. Customer shall not copy or reproduce the SaaS and/or Data Hosting Service in any manner, including onto its own computer, server or network systems, provided that Customer may install the Incidental Software on its own computers or handheld devices for its authorized users only. Access to and use of the SaaS and/or Data Hosting Service is restricted to Customer's authorized users only. Customer shall be responsible to ensure all Customer users maintain the security of any password, username, or other form of authentication involved in obtaining access to the SaaS and/or Data Hosting Service. Usernames and passwords must be uniquely assigned to a specific individual and may not be shared by multiple individuals at any one time or transferred.

3.5 Other Rights and Limitations.

3.5.1 Customer may not copy, modify, make derivative works of, rent, lease, sell, distribute or transfer the Applications, in whole or in part, except as otherwise expressly authorized under this Agreement. No service bureau work, multiple-user license or time-sharing arrangement is permitted. For purposes of this Agreement "service bureau work" shall be deemed to include, without limitation, use of the Applications to process or to generate output data for the benefit of or for purposes of rendering services to any third party over the Internet or other communications network. Customer agrees to use all commercially reasonable efforts to prevent its unauthorized use and disclosure.

3.5.2 The Applications contain valuable trade secrets proprietary to APS and its suppliers. To the extent permitted by relevant law, Customer shall not, nor allow any third party to copy, decompile, disassemble or otherwise reverse engineer the Applications, or attempt to do so, provided however, that to the extent any applicable mandatory laws give Customer the right to perform any of the aforementioned activities without APS' consent in order to gain certain information about the Licensed Software for purposes specified in the respective statutes (e.g., interoperability), Customer hereby agree that, before exercising any such rights, it shall first request such information from APS in writing detailing the purpose for which it needs the information. Only if and after APS, at its sole discretion, partly or completely denies the request, may Customer exercise such statutory rights.

3.5.3 Each Application is licensed as a single product. Customer may not separate its component parts for use on more than one computer except as specifically authorized in this Agreement.

3.5.4 Customer may not use the Applications for performance, benchmark or comparison testing or analysis, or disclose to any third party or release any results thereof (all of which information shall be considered APS Confidential Information) without APS' prior written consent.

3.5.5 Customer agrees to cooperate with APS to track the number of users, server computers, computers and other devices with access to the Applications at Customer's sites to ensure compliance with the license grant and installation restrictions in this Agreement. In the event the compliance check reveals that the number of installations or users at Customer's site exceeds the actual number of licenses purchased, Customer agrees to promptly reimburse APS the then current applicable list price for the extra licenses that are required to be compliant, but that were not obtained.

3.5.6 Each of Customer's computers or handheld devices on which Incidental Software is installed must be reconnected periodically to the Internet to communicate to the SaaS throughout the Term to enable the Incidental Software to continue to function properly. The required reconnection intervals are specified in the Documentation. Further, the Incidental Software will cease to function after the expiration or termination of the Term.

3.6 Customer Responsibilities.

3.6.1 Customer shall not: (i) send, store or run software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (ii) interfere with or disrupt the integrity of the Applications or the data contained therein; or (iii) upload,

post, reproduce or distribute any information, software or other material protected by copyright or any other intellectual property right (including the right of publicity and/or privacy) without first obtaining the permission of the owner of such rights.

3.6.2 Customer is solely responsible for: (i) monitoring and controlling the activity of each of its users; (ii) ensuring users' compliance with this Agreement; (iii) ensuring there is no unauthorized access to the Applications and notifying APS promptly of any such access of which Customer becomes aware; (iv) the reliability, accuracy, quality, integrity and legality of all Customer data and the means by which Customer acquires the Customer data; and (v) ensuring that its use of the Applications is in compliance with all applicable laws and regulations. Customer shall be solely responsible and liable for the acts and omissions of each of its users on the Applications.

- 3.7 Copyright.** All title and copyrights in and to the Applications (including but not limited to any images, photographs, animations, video, audio, music, and text incorporated into the Applications), the accompanying printed materials, and any copies of the Applications are owned by APS and its suppliers. Customer may, however, either: (a) make one (1) copy of the Licensed Software solely for backup or archival purposes; or (b) install the Licensed Software on a single computer provided it keeps the original solely for backup or archival purposes. Customer may not copy the accompanying printed materials without APS' consent or unless provided herein.
- 3.8 U.S. Government Restricted Rights.** The Applications are provided with "RESTRICTED RIGHTS." Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in this Agreement, and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (OCT 1988), FAR 12.212(a) (1995), FAR 52.227-19, or FAR 52.227-14(ALT III), as applicable.
- 3.9 Customization.** Customization or configuration of Applications performed by APS at Customer's request, if any, are Professional Services as provided in Section 5 and will be subject to additional charges, except as agreed to in writing by APS. APS will retain all intellectual property and other proprietary rights in and to the Applications and any additional customization or configuration, and shall have the right and authority to use, sell and distribute the Applications and utilize the results of the work for any other purpose, in APS' sole discretion, without requirement of notification or liability to Customer of any kind (including, without limitation, monetary remuneration).
- 3.10 Limited Software Warranty.** APS warrants that Customized Software will perform substantially in accordance with the Documentation for a period of one (1) year from the date of purchase. The above limited warranty does not apply to error corrections, updates or upgrades, if any, of the Customized Software after expiration of the limited warranty period, which are provided "AS IS" and without warranty unless otherwise specified in writing by APS. APS does not warrant that Applications will operate error free or uninterrupted, will meet Customer's needs or expectations, or that all nonconformities can or will be corrected.
- 3.11 Customer Remedies.** APS' and its suppliers' entire liability, and Customer's sole remedy, with respect to the Customized Software shall be either, at APS' option, (a) repair or replacement of the Customized Software, or (b) return of the applicable license fee paid for any Customized Software that does not meet APS' limited warranty. The foregoing limited warranty is void if failure of the Customized Software has resulted from: (i) accident, misuse, abuse, or misapplication; (ii) alteration or modification of the Customized Software without APS' authorization; (iii) interaction with software or hardware not supplied or supported by APS; (iv) improper, inadequate or unauthorized installation, maintenance or storage; or (v) if Customer violates the terms of this Agreement. Any replacement Customized Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.
- 3.12 Third Party Software Warranty.** APS will extend to Customer the manufacturer's warranty, if any, for third-party software delivered by APS to Customer under this Agreement. Customer acknowledges and agrees that APS shall not be responsible for separately warranting or supporting third-party software and that Customer must contract directly with the manufacturer of such third-party software for any support or maintenance.
- 3.13 Software Support and Maintenance; Service Level Agreement.** Subject to continuing payment of the applicable maintenance fees, Subscription Fees, and/or Hosting Fees, APS shall (i) provide support and maintenance services ("**Maintenance Services**") for the Licensed Software, but not including any third-party software, to Customer as described in Exhibit 1 hereto and (ii) provide the Service Level Agreement as described in Exhibit 2 for the SaaS and Data Hosting Service.

4. EQUIPMENT PURCHASES

The terms of this Section 4 shall apply to Customer's purchase of Equipment from APS pursuant to this Agreement.

- 4.1 Purchase Price.** The purchase price for the Equipment shall be as set forth on the applicable Product Schedule. Billing, payment and shipping terms shall be pursuant to Sections 7 and 8 of this Agreement.

- 4.2 Security Interest.** Until APS has received full payment of the purchase price for the Equipment, APS shall retain a purchase money security interest in the Equipment, unless prohibited by law. Customer agrees to execute any document to perfect such security interest as reasonably requested by APS.
- 4.3 Installation of Equipment.** Unless Customer has purchased installation services in the applicable Product Schedule, APS shall not be responsible for installing Equipment at Customer's location, which shall be Customer's sole responsibility.
- 4.4 Testing of Equipment.** Customer shall test all Equipment within ten (10) business days of receipt of such Equipment to ensure each unit is functioning properly. All packaging, user manuals, and accessories must be retained for at least thirty (30) days in their original condition should a warranty exchange, as provided below, be necessary.
- 4.5 Third Party Manufactured Equipment Warranty.**
- 4.5.1** If third party manufactured Equipment is incorrect, nonconforming, or damaged, Customer must notify APS in writing within ten (10) business days after Customer's receipt of such Equipment. APS will handle warranty returns pursuant to its RMA warranty return procedures then in effect for defects in such Equipment identified by Customer within thirty (30) days after Customer receives such Equipment. After such thirty (30) day period, Customer must refer all requests for warranty repairs or processing directly to the manufacturer.
- 4.5.2** APS will extend to Customer the manufacturer's warranty, if any, for all third-party manufactured Equipment delivered by APS to Customer under this Agreement. Customer acknowledges and agrees that APS shall not be responsible for separately warranting or supporting third-party manufactured Equipment other than as provided in Section 4.5.1.
- 4.5.3** THIS SECTION 4.5 STATES CUSTOMER'S SOLE REMEDY, AND THE SOLE LIABILITY OF APS, ARISING OUT OF ANY DEFECT IN THE EQUIPMENT SUPPLIED HEREUNDER.

5. PROFESSIONAL SERVICES

The terms of this Section 5 shall apply to APS' provision of professional services, including Deliverables, ("**Professional Services**") as described on an applicable Statement of Work (which is incorporated herein by reference). Professional Services may include, as examples and without limitation, configuration, training, software customization, software changes or Equipment installation.

- 5.1 Professional Services.** APS agrees to use diligent efforts to render the Professional Services described on the applicable Statement of Work by the delivery dates specified therein, if any. Any deliverables provided to Customer as part of the Professional Services shall be deemed "**Deliverables**". Customer acknowledges and agrees that APS requires Customer's diligent and timely cooperation, testing and feedback, including providing APS with reasonable access to Customer materials, resources, personnel, equipment or facilities to the extent such access is necessary for the performance of Professional Services. To the extent that Customer does not timely provide the foregoing cooperation, testing, feedback, and access required for APS to perform the Professional Services, APS shall be excused from performance until such items are provided. APS being excused from performance does not excuse Customer's continuing payment of Subscription Fees or Hosting Fees.
- 5.2 Changes to Scope of Professional Services.** If Customer desires to change a Statement of Work, Customer will submit a written request to APS detailing the proposed changes. If APS has the resources available to accommodate such changes, APS shall prepare an amendment to the Statement of Work or a change order (collectively "**Change Order**") detailing the changes, any fee adjustments required as a result of such changes, any adjustments to the delivery schedule required as a result of such changes, and any other necessary adjustments. If the Change Order is agreeable to Customer, both parties will execute the Change Order. If Customer and APS are not able to agree to changes to the Statement of Work, it will remain unchanged.
- 5.3 Training; User Acceptance Testing.** This Section 5.3 applies only to Deliverables for Customized Software.
- 5.3.1 Training Before User Acceptance Testing.** Customer must complete the remote, web-based training program provided by APS within fifteen (15) days after APS provides the initial software delivery to Customer as described in the Statement of Work ("**Initial Software Delivery**").
- 5.3.2 User Acceptance Testing ("UAT").** Customer must complete its UAT within thirty (30) days after completing the training referenced in Section 5.3.1.
- 5.3.3** Failure of Customer to schedule and attend the training programs or perform UAT within the time periods described in this Section 5.3 shall result in APS' automatic termination of Customer's Product Schedule pursuant to Section 9.2.2.
- 5.4 SmartExport Integration Services.** If Customer licenses the SmartExport product pursuant to Section 3 and the applicable Product Schedule, Customer must timely provide APS with the data and/or specifications APS requires to perform the configuration and

customization Professional Services for SmartExport for Customer. If Customer does not provide APS with such data or specifications by the agreed-upon deadline (but in no event more than 180 days after the Initial Software Delivery), then APS may provide and implement a Change Order to Customer by notice removing the SmartExport product from the applicable Product Schedule, which shall not reduce the License Fees or Subscription Fees, as the case may be.

- 5.5 Final Training Program.** If Customer purchases a final training program for Customized Software for Customer's end user employees, Customer shall cooperate with APS to schedule and attend such training program within thirty (30) days after APS provides the final Software Deliverable. If Customer fails to schedule and attend such training, APS may provide and implement a Change Order to Customer by notice removing the Final Training Program from the applicable Product Schedule, which shall not reduce any Fees due nor result in a refund to Customer.
- 5.6 Visual Statement (VS) Product Online Training.** If Customer purchases a VS product training seat for Customer's end user employees, Customer shall register and attend one of the regularly scheduled training courses within one hundred and eighty (180) days of purchase. If Customer fails to register for and attend such training within this time period, APS will consider its obligation for delivery of such training seat fulfilled and the training seat will no longer be valid and no refund will be given.
- 5.7 Visual Statement Onsite Training.** If Customer purchases a Closed VS Onsite Training for Customer's end user employees, Customer shall cooperate with APS to schedule and host such training program within one hundred and eighty (180) days of purchase. If Customer fails to schedule and attend such training within this time period, APS will consider its obligation for delivery of such training program fulfilled and the training course will no longer be valid and no refund will be given.

6. PRODUCT SCHEDULES

- 6.1 Submission of Product Schedule(s).** From time to time during the term of this Agreement, Customer may submit one or more Product Schedules, pursuant to which Customer shall purchase or license and APS shall deliver (upon acceptance thereof by APS, in accordance with Section 6.2) the Products and/or Services specified thereon. This Agreement shall apply to all Product Schedules submitted to and accepted by APS during the Term which Product Schedules are incorporated herein by reference. Unless otherwise specified therein, each Product Schedule shall be independent from, and have no impact on, any other Product Schedule(s). In the event any of the terms and conditions of a Product Schedule conflict with any term or condition hereof, the terms of this Agreement shall control and take precedence, unless the parties specifically agree otherwise in writing. Customer's submitting a Product Schedule to APS shall constitute Customer's binding and irrevocable offer to purchase the Products and/or Services specified thereon. Any additional or conflicting terms or conditions appearing on Orders or within Customer's terms and conditions of purchase or any other documentation shall be of no effect.
- 6.2 Acceptance of a Product Schedule; Statement of Work.** A Product Schedule shall not become effective unless or until it has been accepted by APS. A Product Schedule shall be deemed accepted by APS only upon the earlier of (a) the date APS ships any Product or makes available any Products or Services under such Product Schedule or (b) the date APS signs the applicable Product Schedule, thereby accepting in writing the terms thereof, provided however that a Statement of Work shall be deemed accepted by APS only upon the signature of both parties to the Statement of Work. The parties acknowledge that once APS accepts a Product Schedule, such Product Schedule shall represent a binding agreement whereby APS agrees to provide and Customer agrees to purchase the Products and/or Services ordered thereunder, pursuant to this Agreement.

7. DELIVERY; ACCEPTANCE

- 7.1 Delivery time.** Delivery times may be established by one of the following methods: (a) when Customer's Order is received and accepted in writing by APS; (b) after a Statement of Work is signed by Customer and APS, after which APS will produce the full business and functional requirements and specifications for the project and determine delivery dates; or (c) as otherwise provided in a Product Schedule. APS will use commercially reasonable efforts to meet the delivery dates agreed upon, unless Customer is in default under this Agreement or APS' performance is otherwise excused. APS shall not be liable for late or delayed shipment. Late or delayed shipment shall not be a basis for Customer's cancellation of any Order.
- 7.2 Delivery terms.** Delivery of the Equipment and Licensed Software (if not delivered electronically) will be made on an FCA (Incoterms 2010) APS' facility basis. Title and risk of loss or damage to the Equipment and, if applicable, the media containing Licensed Software (but not the Licensed Software) shall pass to Customer upon shipment. Unless otherwise agreed, APS will deliver the Products freight prepaid; provided that Customer will pay or reimburse APS for all costs of carriage, freight, insurance (if applicable), taxes, duty and other related shipping charges in connection with shipment hereunder. APS has the right to make partial deliveries.
- 7.3 Acceptance.** Equipment shall be deemed accepted after the ten (10) day testing period referenced in Section 4.4, unless Customer notifies APS in writing prior to the expiration of such testing period that such Equipment is not functioning properly. Applications and

Professional Services shall be deemed accepted ten (10) days after completed delivery of all Software Deliverables or Professional Services, as applicable, unless Customer notifies APS in writing of a material nonconformity in the Application.

7.4 Return of Products. There is no right of return of Products. If APS, in its discretion, permits the return of Equipment, such Equipment must be returned to APS (a) within thirty (30) days of Customer's receipt of the Equipment, (b) in new, unused condition with all original packaging, and (c) pursuant to instructions provided by APS. APS will charge a 10% restocking fee for permitted returns.

8 PRICING; PAYMENT TERMS

8.1 Pricing. Customer shall pay the charges and fees for the Products and Services as shown on the applicable Product Schedule. APS reserves the right to change the amount of the annual Subscription Fees, Hosting Fees and Maintenance Services Fee once per year at the date of renewal, subject to APS notifying Customer at least thirty (30) days in advance.

8.2 Payment Terms. Payment terms applicable to this Agreement shall be as follows:

8.2.1 Payment Terms. Unless agreed otherwise in a Product Schedule:

- (a) Except for the items described in Sections 8.2.1(b) – (e) below, payment terms shall be as follows: 50% of the total price and license fees for Products and Professional Services is due on receipt of Customer's Order or execution of the applicable Product Schedule; thereafter, 40% of the price is due on Initial Software Delivery (excluding SmartExport if applicable); and the remaining 10% is due fifteen (15) days following completed delivery of all Software Deliverables.
- (b) The renewal payments specified in the applicable Product Schedule and due for the SaaS ("**Subscription Fees**") and/or Data Hosting Services ("**Hosting Fees**") shall be invoiced and payable annually in advance on each anniversary of the date Customer is first provided access to the SaaS or Data Hosting Services, as the case may be.
- (c) Maintenance Services Fees specified in the applicable Product Schedule for Licensed Software shall be invoiced and payable annually in advance at the beginning of the Initial Maintenance Services Term and each Renewal Services Term (such Services Terms are defined in Exhibit 1). If Customer discontinues and then resumes purchase of Maintenance Services, then in addition to the Maintenance Services Fee for the upcoming year, Customer shall pay the then-current APS reinstatement fee for the applicable Maintenance Services.
- (d) APS shall invoice Customer for Equipment purchased upon shipment to Customer.
- (e) Customer agrees to reimburse APS for pre-approved travel, lodging and meal expenses incurred in the course of performing the Services at any location other than APS' site. APS will invoice Customer for expenses incurred and, at Customer's request and expense, APS will provide copies of receipts for which charges are incurred.

All payments due under this Agreement shall be made in U.S. Dollars net thirty (30) days from the date of APS' invoice unless otherwise required by law. APS shall have the continuing right to review Customer's credit and change Customer's payment terms and, without limiting the foregoing, may at any time demand advance payment, satisfactory security (such as, but not limited to, a confirmed, irrevocable letter of credit acceptable to APS), or a guarantee of prompt payment, prior to shipment, if APS deems such to be required in view of APS' assessment of Customer's credit worthiness. No discount will be granted for advance payment. All payments are nonrefundable, unless expressly provided herein. APS may in its sole discretion stop performing Services until any past-due amounts are paid in full. Maintenance Services will automatically renew after each Maintenance Services Term (as defined in Exhibit 1) unless cancelled by Customer with sixty (60) days written notice to APS prior to the expiration of the then-current Maintenance Services Term.

8.2.2 Late Payments. If any fees or expenses are not paid when due, APS may, at its option and without prejudice to any other rights or remedies it may have, charge interest at a rate of one percent (1%) per month or, if less, the highest rate allowed by applicable law from the date such fee or the charge first became due, unless otherwise required by law. Customer shall be liable for any costs incurred by APS in the collection of unpaid amounts. The date of the receipt of payment by APS shall be determinative. APS shall be entitled to offset payments against prior debt balances in Customer's account.

8.2.3 Taxes. Fees are stated exclusive of any income (except for taxes on APS' net income), consumption, VAT, property, export, excise, sales and use, or other taxes, custom duties, or similar charges, levies or assessments, or by any related withholding obligations or withholding taxes, all of which are the responsibility of and shall be paid solely by Customer, unless Customer provides an exemption certificate valid in the state to which the Products will be shipped or Services delivered.

9. TERM AND TERMINATION; SUSPENSION

9.1 Term. This Agreement shall commence upon the Effective Date and continue in effect for five (5) years thereafter unless otherwise required by law or terminated earlier pursuant to this Agreement (the "**Term**"). Thereafter this Agreement shall automatically renew for additional one (1) year periods, unless otherwise required by law or terminated earlier pursuant to this Agreement, and the Term shall be extended accordingly. Customer shall notify APS in writing in advance if applicable law requires a different fixed term or renewal process.

9.2 Termination.

9.2.1 For Convenience. Either party may terminate this Agreement and any Product Schedule for any reason or no reason by giving ninety (90) days' advance, written notice delivered in accordance with Section 16.10.

9.2.2 For Breach. Either party shall have the right to terminate this Agreement and any Product Schedule upon written notice in the event that the other party, or any of its officers, employees, contractors or agents breaches any provision of this Agreement, and such breach remains uncorrected for more than thirty (30) days after the non-breaching party gives the breaching party written notice of such breach. Customer and APS stipulate that Customer's failure to perform for purposes related to Section 9.2.4, below, does not qualify as a breach of this Agreement under this Section, 9.2.2.

9.2.3 For Bankruptcy, Insolvency. Either party may terminate this Agreement and any Product Schedule upon written notice in the event that the other party ceases business operations or enters into any bankruptcy, insolvency, receivership or like proceeding not dismissed within thirty (30) days, or assigns its assets for the benefit of creditors.

9.2.4 Availability of Funds. Customer warrants that it has funds available to pay all amounts due hereunder through the end of its current appropriation period and warrants further that it will request funds to make payments in each appropriation period from now until the end of the Agreement term. In the event that: (i) funds are not appropriated and are not otherwise available to Customer for any fiscal period following its current fiscal year ("subsequent fiscal period") for the acquisition of Services and functions which are the same as or similar to those for which the Products provided or installed under the Agreement was acquired, (ii) such non-appropriation has not resulted from Customer's act or failure to act, and (iii) Customer has exhausted all funds legally available for payment under the Agreement and no other legal procedure shall exist whereby payment thereunder can be made to APS, then Customer may terminate this Agreement to be effective as of the last day for which funds were appropriated or otherwise made available by giving APS sixty (60) days prior written notice of termination citing the unavailability of funds to continue. Notwithstanding the preceding paragraph, Customer shall remain responsible for payment to APS for all Services performed, as well as for all Products delivered and accepted.

9.2.5 For Customer's Unresponsiveness, Delays. In addition to APS' right to terminate this Agreement or the applicable Product Schedule pursuant to Sections 9.2.1 or 9.2.2, if Customer is unresponsive and does not timely provide or perform the feedback, testing, training or other communication required or anticipated by the applicable Product Schedule, APS' performance shall be excused and APS may put the applicable Product Schedule on hold and/or terminate this Agreement or Product Schedule as follows:

(a) If Customer is unresponsive for ninety (90) days from the date the last Deliverable was provided by APS to Customer, then APS may put the applicable Product Schedule on hold and suspend performance pending Customer's required response or action. APS may immediately invoice Customer for Products delivered and Professional Services rendered through the date of the hold at APS' then-current list price and time and materials rates, including any time and materials cost spent or incurred to set up the SaaS or Data Hosting Service for Customer.

(b) If a Product Schedule remains on hold for six (6) months or more, then APS may terminate, pursuant to Section 9.2.2, this Agreement and/or the applicable Product Schedule immediately upon written notice to Customer.

(c) If Customer is unresponsive for a period of one (1) year from the date the last Deliverable was provided by APS to Customer and APS has not previously terminated this Agreement and/or the applicable Product Schedule, this Agreement and the applicable Product Schedule shall automatically terminate and all fees listed in the applicable Product Schedule shall become due and payable (less amounts previously paid), provided that Customer shall not be required to pay for Equipment not shipped as of the date of termination.

(d) Customer acknowledges and agrees that placing a Product Schedule on hold and suspending performance shall affect the schedule for performance of Professional Services and delivery of Deliverables to Customer and APS may reassign its personnel in its sole discretion. If a Product Schedule is restarted with APS' consent, adjustments shall be made to the delivery schedule dependent upon the availability of APS personnel. If APS authorizes Customer to restart a Product Schedule terminated by APS pursuant to this Section 9.2.5, such re-engagement shall be at APS' then-current prices. The parties shall enter into a Change Order or new Product Schedule reflecting such new pricing and schedule for performance.

9.3 Effect of Termination. If this Agreement or a Product Schedule is terminated by Customer pursuant to Section 9.2.1, Customer shall pay APS (a) for Professional Services on a time and materials basis and Licensed Software at APS' then-current rates through the effective date of the termination, (b) Subscription Fees, Hosting Fees and Maintenance Services Fees for the then-current Term as if the Agreement had not been terminated early, (c) Equipment shipped, and (d) reimburseable expenses incurred, less amounts previously paid by Customer to APS under the applicable Product Schedule. If this Agreement or a Product Schedule is terminated by

APS pursuant to Sections 9.2.2 or 9.2.3, all fees listed in the applicable Product Schedule shall become immediately due and payable (less amounts previously paid), provided that Customer shall not be required to pay for Equipment not shipped as of the date of termination. The termination of this Agreement or any Product Schedule shall not relieve either party of any obligation previously accrued hereunder, nor is termination an exclusive remedy. Upon expiration or termination of this Agreement, Customer shall cease using the Applications, and return or permanently remove from all computers, servers and devices the Licensed Software, Documentation and other Confidential Information of APS and, upon APS' request, certify such removal in writing.

9.4 Suspension. In addition to APS' right to terminate this Agreement pursuant to Section 9.2.2, APS may suspend or restrict Customer's authorized users' access to the Applications, without liability, if: (i) Customer materially breaches (which shall include without limitation nonpayment of fees due) its obligations hereunder (provided, however, APS shall provide Customer with prior written notice of such suspension); (ii) APS determines in its sole discretion that the delivery of the SaaS, Data Hosting Service or Customer's use of the Applications is a threat to the normal operation of or otherwise compromises the APS network or any network used to provide the SaaS or Data Hosting Service; or (iii) APS has reason to believe that Customer, any of its agents or any third party is abusing one or more of the Applications or using it fraudulently or unlawfully.

9.5 Survival. The following sections, and any other sections that by their terms so provide, shall survive the expiration or termination of this Agreement: 2, 3.5 through 3.11, 8, 9.3, 9.5, 10, 11.2 through 11.4, and 14 through 16.

10. WARRANTY DISCLAIMER

10.1 Warranty Disclaimer. APS' REPRESENTATIONS AND LIMITED WARRANTIES HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES (WHICH ARE HEREBY DISCLAIMED), WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE INCLUDING (BUT NOT LIMITED TO) THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, NONINTERFERENCE AND NONINFRINGEMENT WITH REGARD TO THE PRODUCTS OR SERVICES PROVIDED BY APS, ITS LICENSORS, SUPPLIERS, REPRESENTATIVES OR SERVICE PROVIDERS.

10.2 APS DOES NOT WARRANT THAT THE SERVICES OR PRODUCTS PROVIDED HEREUNDER WILL SOLVE ANY GENERAL OR SPECIFIC PROBLEM OR MEET ANY GENERAL OR SPECIFIC CUSTOMER NEEDS.

10.3 Services Warranty. APS represents and warrants that Services will be performed in a professional, workmanlike manner by qualified professionals. APS MAKES NO OTHER WARRANTIES WHATSOEVER WITH RESPECT TO SAAS, DATA HOSTING SERVICE OR SERVICES WHICH IF PROVIDED HEREUNDER, ARE PROVIDED "AS-IS."

11. ACKNOWLEDGEMENTS; REPRESENTATIONS

11.1 Acknowledgements. APS and Customer acknowledge and agree:

(a) APS is not responsible for the terms, conditions, obligations, or performance of or arising under agreements between Customer and any wireless or cellular network or airtime provider in connection with using the Products;

(b) APS assumes no responsibility for improper storage of data or information or delivery of messages;

(c) Customer assumes the entire risk in downloading or otherwise accessing any data, information, files or other materials obtained from the APS website, the SaaS, or the Data Hosting Service; and

(d) Wireless networks and coverage, satellite coverage, and Internet access that are necessary for use and operation of the Products may be interrupted, terminated or restricted or the quality of the transmission may be diminished at any time. Actual coverage and operation of the Products may depend on system availability and capacity, system and equipment upgrades, repairs, maintenance, modifications and relocation, Customer's equipment, terrain, signal strength, structural conditions, weather and atmospheric conditions, governmental regulations, suspected fraudulent activities, acts of God and other conditions beyond APS' reasonable control.

11.2 Representations. Each party to this Agreement represents and warrants to the other party that: (a) such party has the full corporate right, power and authority to enter into this Agreement and each and every Product Schedule hereunder, and to perform the acts required of it hereunder; and (b) when executed and delivered by such party, subject to applicable law (if any), this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms. Customer shall not use the Products for any unlawful, abusive or fraudulent purpose, including without limitation, in any way that: (x) interferes with the ability of APS to provide products and services to Customer or other customers; or (y) avoids Customer's obligation to pay for the Products. Customer shall indemnify and hold harmless APS from any loss or damage to Customer or any third party resulting from Customer's misuse of Products.

11.3 Privacy. APS and Customer acknowledge that use of the Applications may have user privacy implications. Whether, and to what extent, a user's privacy rights are implicated may be affected by such things as: the use to which an Application is put; the information that is gathered by the Application; the dissemination of information that is gathered; the actions that are taken based upon the information gathered; the user's knowledge and/or consent to such monitoring; the policies and procedures that have been implemented and communicated by the administrator; and current federal and state laws, regulations and constitutional rights

applicable to the user. APS' use of Customer data arising from the Applications shall be governed by the Trimble Privacy Policy as may be modified from time to time, located at www.trimble.com/privacy.aspx and incorporated herein by this reference.

- 11.4 Customer's use of the Applications may create data that becomes the subject of litigation. If any aspect of the Applications becomes the subject of compulsory process for documents, testimony or other investigation in any proceeding in which Customer is a party and APS is not a party, Customer agrees to pay all fees incurred by APS in connection with reviewing, responding and complying with the process or other investigation to the extent such fees are not otherwise reimbursed by third parties. These fees include, without limitation, fees of APS or its outside counsel to object to or negotiate the terms of APS' compliance with the process and fees for time spent by APS' employees (at APS' then-current consulting rates) to respond to the process, together with all other reasonable out-of-pocket expenses incurred by APS, including but not limited to attorneys' fees and travel.

12. INDEMNIFICATION AND HOLD HARMLESS; LIMITATION OF LIABILITY

- 12.1 EXCEPT FOR DAMAGES FOR PHYSICAL HARM TO PERSONS, TANGIBLE PERSONAL PROPERTY OR REAL PROPERTY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF APS, APS SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY ANY OF THE PRODUCTS OR SERVICES PROVIDED HEREUNDER OR BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN, EVEN IF APS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

- 12.2 To the fullest extent allowed by law, APS shall indemnify, defend, and hold harmless the City, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or tangible damage to property arising from or connected with the willful misconduct or gross negligence of APS or any person directly or indirectly employed by or acting as agent for APS in the performance of this Agreement

It is understood that the duty of APS to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code, subject to the procedure described in Section 14.5. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve APS from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages. APS's responsibility for such defense and indemnity shall survive termination or completion of this agreement for the full period of time allowed by law.

- 12.3 EXCEPT FOR A BREACH OF SECTION 14, IN NO EVENT SHALL APS' TOTAL LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE PRODUCTS OR SERVICES FURNISHED, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED THE ACTUAL AMOUNT OF FEES PAID BY CUSTOMER TO APS UNDER THE APPLICABLE PRODUCT SCHEDULE.

- 12.4 THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

- 12.5 The parties agree that APS has set its fees and entered into this Agreement in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

13. INSURANCE REQUIREMENTS

- 13.1 WORKERS' COMPENSATION. During the term of this Agreement, APS shall fully comply with the terms of the law of California concerning workers' compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability APS may have for workers' compensation. Said policy shall also include employer's liability coverage of no less than \$1,000,000 per accident for bodily injury or disease.

- 13.2 GENERAL LIABILITY INSURANCE. APS shall obtain at its sole cost and keep in full force and effect during the term of this Agreement commercial general liability insurance in the amount of no less than \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage.

- 13.3 AUTOMOBILE LIABILITY INSURANCE. APS shall obtain at its sole cost and keep in full force and effect during the term of this Agreement automobile liability insurance in the amount of no less than \$1,000,000 per occurrence for bodily injury and property damage.

- 13.4 The general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

(a) The CITY, its officers, officials, employees, agents and volunteers shall be named as additional insureds under the policy.

(b) The CITY, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of

work or operations performed by or on behalf of APS; products and completed operations of APS; premises owned, occupied or used by APS; and automobiles owned, leased, hired or borrowed by APS. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, agents or volunteers.

(c) The policy shall operate as primary insurance, and no other insurance effected by the CITY or other named insureds will be called upon to cover a loss covered thereunder.

13.5 No cancellation, major change in coverage, expiration, or nonrenewal will be made during the term of this Agreement, without thirty (30) days written notice to the City of Fairfield prior to the effective date of such cancellation, or change in coverage.

13.6 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

13.7 The minimum limits stated above shall not serve to APS's policy limits of coverage. The requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

13.8 Concurrent with the execution of this Agreement, APS shall file with the City of Fairfield a standard endorsement form providing for each of the above requirements.

14. INTELLECTUAL PROPERTY

14.1 **Intellectual Property Ownership.** As between APS and Customer, Customer agrees that APS and its suppliers, as applicable, own all right, title and interest in and to all intellectual property and other proprietary rights in the technology, software, designs, engineering details, schematics and similar data relating to or incorporated in the Products and Services and any accompanying documentation or information derived from the foregoing. Customer is prohibited from, and shall prevent any third party from, removing, covering or altering any of APS' or its suppliers' patent, copyright or trademark notices placed upon, embedded in or displayed by the Products or their packaging and related materials. APS and its suppliers, as applicable, reserve all rights not specifically granted to Customer hereunder.

14.2 **Indemnification.** APS shall indemnify and hold Customer harmless from and against any finally adjudicated loss, damage, liability or expense on account of any claim(s), and shall defend any suit and dispose of any claim(s) or other proceedings, arising from an allegation that an Application (which shall not include third party software) infringes any United States patent, copyright, or other proprietary right. In the event that such Application is, or in APS' opinion is likely to be, enjoined due to the type of infringement described in this Section 14.2, APS, at its option and expense, may in its discretion: (a) procure for Customer the right under such patent or copyright to use the infringing Application; (b) modify the infringing Application so that it becomes non-infringing; (c) replace the infringing Application with functionally equivalent non-infringing products or services; or (d) if APS determines that the foregoing alternatives are not reasonably available, accept return (or certification of permanent removal) of the infringing Application or applicable part thereof, and refund the payments paid for such Application. APS shall not be liable for any costs or expenses incurred without its prior written authorization.

14.3 **Exceptions.** Notwithstanding the provisions of Section 14.2 above, APS shall have no liability to the extent that any claim or action would have been avoided but for: (a) the combination, operation or use of the Application with any other product(s) or service(s) not provided by APS; (b) modification of the Application after delivery by APS, unless such modification is performed by APS or a duly-authorized APS agent and authorized in advance in writing by APS; (c) Customer's use of a version of an Application which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Application; or (d) incorporation of the Application into any of Customer's own product(s) or service(s).

14.4 **Entire Liability.** THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF APS AND THE EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ANY ALLEGED INFRINGEMENT OF ANY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS BY THE APPLICATIONS OR ANY PART THEREOF.

14.5 **Procedure.** APS' indemnification obligations under this Section 14 shall be subject to and conditioned upon Customer: (a) giving APS sole control of any such claim, suit or proceeding or settlement negotiations (to the extent permitted by law); (b) notifying APS promptly in writing of such claim, suit or proceeding and giving APS authority to proceed as contemplated herein; (c) at APS' reasonable expense, giving proper and full information and assistance to settle and/or defend any such claim, suit or proceeding; and (d) agreeing not to enter into any settlement of such claim, suit or proceeding.

15. CONFIDENTIALITY

15.1 **Confidential Information.** "Confidential Information" of a party shall mean any information disclosed by that party to the other pursuant to this Agreement or pursuant to any Product Schedule hereunder which is in written, graphic, machine readable or other tangible form and is marked "Confidential," "Proprietary" or in some other manner to indicate its confidential nature. However, all

Customer data remains the property of the Customer and shall remain confidential regardless of whether pre-marked as confidential or in any other manner to indicate its confidential nature. Confidential Information may also include oral information disclosed by one party to the other pursuant to this Agreement or any Product Schedule hereunder, provided that such information is designated as confidential at the time of disclosure and is reduced to writing by the disclosing party within a reasonable time (not to exceed thirty (30) days) after its oral disclosure, and such writing is marked in a manner to indicate its confidential nature and delivered to the receiving party. The terms and conditions of this Agreement and of each applicable Product Schedule shall be considered Confidential Information of APS.

15.2 Nondisclosure. Each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except as set forth herein, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each of the parties shall use at least the same degree of care that it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other party under this Agreement, which shall in no event be less than reasonable care. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information.

15.3 Exceptions. Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information of the other which: (a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving party; (b) was known to the receiving party, without restriction, at the time of disclosure; (c) is disclosed with the prior written approval of the disclosing party; or (d) is disclosed pursuant to the order or requirement of a court, administrative agency, federal law, foreign state law, California state law (including, but not limited to, a public records request pursuant to California Government Code Section 6253 solely to the extent confidential treatment is not permitted by law), applicable regulatory authorities, or other governmental body; provided, however, that the receiving party shall provide prompt notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Notwithstanding anything in this Agreement or any applicable Product Schedule to the contrary, each party may disclose Confidential Information to its affiliates, employees, consultants, agents, attorneys and advisors ("**Representatives**") who need to know the Confidential Information, provided that each such Representative is bound by a confidentiality obligation at least as restrictive as that in this Agreement.

15.4 Remedies. Any breach of the restrictions contained in this Section 15 is a breach of this Agreement which may cause irreparable harm to the non-breaching party. Any such breach shall entitle the non-breaching party to seek injunctive relief in addition to all legal remedies.

16. MISCELLANEOUS

16.1 Assignment. Customer shall not assign or transfer its rights or obligations under this Agreement, in whole or in part, without the prior written consent of APS, which consent shall not be unreasonably withheld. This Agreement shall be binding on and inure to the benefit of the parties respective successors and permitted assigns.

16.2 Governing Law; Jurisdiction. Unless otherwise required by applicable law, this Agreement shall be governed by the laws of the State of California and applicable United States Federal law without reference to "conflict of laws" principles or provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Unless otherwise required by applicable law, the parties consent to the jurisdiction of the state and federal courts located in Santa Clara County, California, for any and all issues arising out of the obligations contained herein.

16.3 Compliance with Law; Export Compliance. Each party shall perform its obligations and exercise its rights under this Agreement in compliance with all applicable laws, rules, regulations and legal orders, including but not limited to the United States Foreign Corrupt Practices Act of 1977 as amended, the International Anti-Bribery and Fair Competition Act of 1998, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Customer may not directly or indirectly export or re-export, or knowingly permit the export or re-export of the Products or Services (or portions thereof) to any country, or to any person or entity subject to United States or foreign export restrictions in contravention of such laws and without first obtaining the appropriate license(s).

16.4 Force Majeure. Except for the payment of fees by the Customer, if the performance of any part of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the reasonable control of either party, that party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.

16.5 Severability. If any provision of this Agreement is held to be invalid or unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

16.6 Waiver. No waiver of any provision of this Agreement shall be effective unless signed by both parties. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

16.7 Headings. The section headings used herein are for reference and convenience only and shall not enter into the interpretation of this Agreement.

16.8 Relationship of the Parties. The relationship of the parties shall be only that of independent contractors. Nothing in this Agreement shall be construed so as to deem a party, or any of its employees, agents, successors or assignees thereof, as an employee, partner, joint venturer or agent of the other party, and neither party shall hold itself or the other party out as such.

16.9 Entire Agreement. This Agreement (including all Exhibits and Product Schedules attached hereto or incorporated herein by reference) constitutes the entire agreement between the parties with respect to its subject matter and supersedes all oral and written negotiations, representations, commitments, proposals, offers, writings and other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing signed by each of the parties. It is expressly agreed that the terms of this Agreement shall supersede the terms in any Customer Order or other purchasing or sales document.

16.10 Notices. All notices and requests in connection with this Agreement are deemed given as of the day they are received either by messenger, overnight delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested. Any such notices to Customer should be sent to the address set forth in the Table on page 1, and sent to the attention of the Customer Contact named in such Table. Any such notices to APS should be addressed as follows (or to such other address as APS may designate in writing to Customer pursuant to this notice provision):

Address:	Copy to:
Advanced Public Safety, Inc. Attention: General Manager 400 Fairway Drive, Suite 101 Deerfield Beach, FL 33441 USA	Trimble Navigation Limited Attention: General Counsel – Legal Notice 935 Stewart Drive Sunnyvale, CA 94085 USA

If Customer elects to change the Customer Contact set forth in the Table on page 1 during the Term, Customer must notify APS of the new Customer contact in writing pursuant to this notice provision.

16.11 Limitations on Actions. No dispute or legal action arising under this Agreement, may be brought by either party more than one (1) year after such cause of action accrued, except that an action for nonpayment may be brought within two (2) years of the date of the last payment.

16.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which will be considered an original and all of which when taken together will constitute a single fully-signed original. Facsimile and other electronic means of signatures on this Agreement shall be binding.

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Exhibit 1 Support and Maintenance Services

This Exhibit 1, Support and Maintenance Services, describes the technical support and maintenance services to be provided by APS for the Licensed Software during the Term, subject to the payment of applicable Maintenance Service Fees.

1. ADDITIONAL DEFINITIONS

- 1.1 **"Fix(es)"** means an error correction or other update created to fix a previous Licensed Software version that does not substantially conform to its performance specifications in the Documentation.
- 1.2 **"Maintenance Services"** means the technical support and maintenance services described in Section 2 of this Exhibit 1.
- 1.3 **"Maintenance Services Term"** means each twelve (12)-month period during which APS will furnish the maintenance services to Customer as described in this Exhibit 1. The Initial Maintenance Services Term commences on the date of completed delivery to Customer of all Software Deliverables. A **"Renewal Services Term"** is deemed to commence automatically at expiration of the previous Services Term (subject to Customer's payment of the applicable fee), or, in the event of a period of discontinuance, the date on which Customer's Order for a resumption of Maintenance Services is accepted in writing by APS.
- 1.4 **"Minor Update(s)"** occur(s) when enhancements are made to current features in the Licensed Software, including for example without limitation, updates resulting from changes in state specifications, laws or regulations.
- 1.5 **"Major Upgrade(s)"** occur(s) when significant new features are added to Licensed Software, or when a new product containing new features replaces the further development of a current product line.

2. MAINTENANCE SERVICES

During the Maintenance Services Term, APS will provide Customer with the following described Maintenance Services to correct errors in the Licensed Software and enable the Licensed Software to perform substantially in accordance with its Documentation:

- 2.1 **Standard Support.** APS will provide telephonic and email support and, subject to Section 2.2 below, will use commercially reasonable efforts to correct or recommend a workaround solution for errors in the Licensed Software in accordance with the priority levels, times of service and escalation procedures set forth in Schedule A attached hereto. Such support is provided for the current release of the Licensed Software and any other release of the Licensed Software for up to one (1) year following APS' announcement of discontinuance of such release.
- 2.2 **Corrective Maintenance.** APS will use commercially reasonable efforts to provide Fixes and/or workarounds to correct errors in the Licensed Software discovered by the Customer conditioned on the following:
 - (a) The error is promptly reported and sufficiently described in writing by the Customer in order for APS to reproduce it;
 - (b) The error did not result from a modification of the Licensed Software done by someone other than APS (or without APS' approval);
 - (c) The error is not due to a failure of equipment, hardware, material or software (drivers, operating systems, etc.) not supplied or supported by APS, and the error occurs through no fault of the Customer;
 - (d) The Licensed Software is used in the form in which it was supplied and/or updated and/or upgraded by APS; and
 - (e) The Licensed Software is and has been at all times installed and used in a proper manner and in accordance with the instructions and Documentation supplied by APS.
- 2.3 **Fixes, Updates and Upgrades.** APS may from time to time develop Fixes, Minor Updates and Major Upgrades for release to its customers generally. During the Maintenance Services Term, Customer will be entitled to receive Fixes and Minor Updates at no additional charge, subject to APS' established procedures for delivery to its customers. Major Upgrades will be made available to Customer for an additional fee. APS will provide reasonable assistance to help Customer install and operate such enhancements, provided that if APS agrees, in its sole discretion, to provide such assistance at Customer's facility, such assistance shall be subject to supplemental charges as described in Section 2.5 below. APS reserves the right to determine, in its sole discretion, what constitutes a Fix, Minor Update or Major Upgrade.
- 2.4 **Excluded Services.** The Maintenance Services provided by APS exclude training, customized software programming services, hardware or related supplies, upgrades or changes to third party software, or upgrades or changes to Licensed Software due to changes or upgrades in Customer or third party software that interfaces with Licensed Software.

2.5 On-site Technical Support. On-site technical support is excluded from the Maintenance Services provided by APS. APS may, however, in its sole discretion, make on-site technical support available to Customer at APS' then current rates for such on-site technical support, plus travel and other reasonable expenses. On-site technical support will be furnished at mutually agreed times.

3. CUSTOMER OBLIGATIONS

3.1 Customer Contact. Customer shall designate and notify APS of Customer's principal contact and one alternate back-up contact who are tasked with operation and maintenance of the Licensed Software for Customer ("**Customer Contact(s).**") To the maximum extent practicable, Customer's communications with APS will be through such designated Customer Contacts, and APS will have no obligation to provide its Maintenance Services to any other persons.

3.2 Customer Cooperation. During the Maintenance Services Term Customer agrees to:

- (a) promptly make available to APS without charge complete and accurate data, assistance and cooperation from Customer's personnel as well as access to Customer's facilities systems and equipment (including but not limited to server and mobile devices) as reasonable and necessary to enable APS to carry out its maintenance service obligations;
- (b) notify APS in writing immediately on becoming aware of a fault in the Licensed Software which might materially affect the operation of the Licensed Software;
- (c) use the Licensed Software in accordance with the Documentation and terms of the Agreement;
- (d) keep full security copies of all data processed by the Licensed Software in accordance with best computing practice;
- (e) ensure that all employees, consultants and contractors of Customer who use the Licensed Software or the Maintenance Services are properly trained in respect of such use;
- (f) ensure that a suitable modem link (e.g., a VPN) as specified by APS is installed and operated by the Customer on the equipment on which the Licensed Software is to be located at its own expense, for the purpose of providing APS with remote access to assist performance of the Maintenance Services; and
- (g) use only the current release version of the Licensed Software as may be provided by APS from time-to-time.

Customer acknowledges and agrees that APS shall not be liable for any deficiency in performing the Maintenance Services if the deficiency results from Customer's failure to provide the foregoing cooperation; and in such case, Customer shall not become entitled to a refund of all or any portion of the applicable Maintenance Services Fees.

3.3 Installation of Fixes, Updates and Upgrades. Customer agrees to install all Fixes, Minor Updates and Major Upgrades in accordance with the instructions and in order of receipt from APS.

3.4 No Modification of Licensed Software. Customer agrees not to modify, enhance or otherwise alter the Licensed Software unless and only to the extent specifically authorized in the Documentation or to the extent that the prior written consent of APS is obtained.

Schedule A
Error Priority Levels, Support Times, Escalation

1. TELEPHONE AND ELECTRONIC MAIL SUPPORT

APS will provide telephone or electronic mail assistance to Customer upon Customer's purchase of Maintenance Services. Support hours and contact information are established by product line as listed in the table below:

Products	Support Hours (Monday – Friday, excluding APS holidays)	Telephone Support Number	Email Support Address
Citation and Forms - APS branded products	8:30 a.m. to 7:00 p.m. Eastern Time (ET)	1-954-354-3000, option 3	support@aps.us
Citation and Forms - Visual Statement branded products	7:00 a.m. to 5:00 p.m. Pacific Time (PT)	1-888-828-0383 x. 503	support@visualstatement.com
Geographic Information Systems (GIS) (generally Omega Group branded products)	7:30 a.m. to 5:30 p.m. Pacific Time (PT)	1-800-228-1059 x. 117	support@theomegagroup.com

APS holidays are as follows:

• New Year's Day	• Thanksgiving Day
• President's Day	• Day after Thanksgiving
• Memorial Day	• Christmas Eve
• Independence Day	• Christmas Day
• Labor Day	• New Year's Eve

2. PRIORITY LEVELS OF ERRORS

In the performance of Maintenance Services, APS applies priority ratings to problems reported by Customer in the following manner:

a. Priority I Errors

- Description: Program errors that prevent some function or process from substantially meeting the functional specifications described in the Documentation, which materially affect the overall performance of the Licensed Software function or process, and for which no work-around solution is known.
- APS Response: APS will initiate the following procedures: (1) assign APS staff to correct the error; (2) provide Customer with periodic reports on the status of corrections; (3) commence work to provide Customer with a work-around, if a work-around can be determined, until final solution is available; and (4) provide a final solution to Customer as soon as it is available.

b. Priority II Errors

- Description: Program errors that prevent some function or process from substantially meeting the functional specifications described in the Documentation, but which has a reasonable work-around solution.
- APS Response: APS will provide a work-around solution to the Customer as soon as possible and shall exercise commercially reasonable efforts to include the Fix for the error in the next maintenance release for the Licensed Software.

c. Priority III Errors

- Description: Program errors that prevent some portion of a function from substantially meeting its functional specification described in the Documentation, but that do not materially affect the overall performance of the Licensed Software function.
- APS Response: APS may include the fix for the error in the next major release of the Licensed Software.

Exhibit 2 Service Level Agreement

This Exhibit 2, Service Level Agreement, describes the service level to be provided by APS for the SaaS and Data Hosting Service for the Term.

1. **Maintenance of Infrastructure.** APS shall be responsible for maintaining all hardware and infrastructure necessary to host the SaaS and Data Hosting Service if housed in data centers under APS' control but not if housed in third party data centers ("**Hosting Facility**"). If housed in a Hosting Facility, the terms of use between APS and the Hosting Facility shall apply.
2. **Customer Data; Backup.** Upon termination or expiration of the Agreement or Product Schedule for the SaaS or Data Hosting Service Customer shall have sixty (60) days to request a copy of the Customer data in a mutually agreeable, commercially standard form. Customer shall pay APS for providing such Customer data on a time and materials basis at APS' then-current rates. APS' Hosting Facility backs up all Customer data using a geo-redundant replication process; provided that APS may change its backup and retention schedule from time-to-time in its sole discretion.
3. **Technical Support.**
 - 3.1 **Support.** APS shall provide its standard technical support for the SaaS and Data Hosting Service during the Term, contingent upon continuing payment of Subscription Fees. APS reserves the right to modify the standard technical support services at any time without notice and in its sole discretion; provided, however, APS shall use commercially reasonable efforts not to modify such technical support in such a manner as to have a material adverse impact on Customer's access to and use of the SaaS and Data Hosting Service. Technical support for the SaaS and Data Hosting Service does not include the following or related services: implementation services, configuration services, integration services, custom software development, modifications to the Applications, training, or assistance with administrative functions. APS support contact information for the SaaS and Data Hosting Service is as listed in Schedule A to Exhibit 1.

3.2 System Performance Guidelines

3.2.1 System Performance. The SaaS and Data Hosting Service shall be available (as defined below) 99.9% of the month, 24 hours a day, 7 days a week, provided however, that APS may schedule periodic maintenance of the system ("**Service Availability Commitment**"). For purposes of this Service Availability Commitment, the SaaS and Data Hosting Service shall be deemed available during periods of "**Service Availability**", which shall be deemed to exist when the SaaS and Data Hosting Service (as applicable) can be accessed by authorized users via the Internet or other applicable wireless technologies and APS is able to receive, store and transmit data to and from the SaaS and Data Hosting Service (as applicable). The Service Availability Commitment and Service Availability do not include periods in which APS is performing periodic maintenance of the service pursuant to Section 3.2.3.

3.2.2 Service Availability Performance. If, in any given calendar month, Service Availability is less than the Service Availability Commitment, Customer may provide APS written notice of such Service Availability failure. APS and Customer shall cooperate (at no cost to Customer) to cure the Service Availability failure as quickly as possible from Customer's delivery of such written notice. Notwithstanding anything herein to the contrary, a Service Availability failure shall not occur and the SaaS and Data Hosting Service shall not be considered "unavailable" if a lack of Service Availability is due to the following: (a) failure of utilities, services, equipment or systems not within APS' reasonable control, including the Hosting Facility; (b) scheduled downtime or planned maintenance with advance written notice to Customer; (c) any act or omission of Customer; (d) Customer's applications, facilities, or equipment; or (e) other causes beyond the reasonable control of APS, including without limitation, failure of a wireless network or the Internet, default of a common carrier, or other *force majeure* event.

3.2.3 Scheduled Downtime. From time to time, APS may schedule downtime periods in which maintenance to the SaaS and/or Data Hosting Service is performed ("**Scheduled Downtime**"), thereby working to ensure further reliability and quality of the SaaS and Data Hosting Service. In the event of planned upgrades and maintenance, APS will provide Customer with at least five (5) days prior written notice of any such planned outage. APS will provide notifications on the client login web page. Such notice shall set forth the planned completion time for the maintenance performed during the Scheduled Downtime. APS shall use its good faith efforts to schedule and perform Scheduled Downtime on off-peak usage days and times appropriate for the region being served. Any Scheduled Downtime will be excluded from the Service Availability calculations.